RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

GUD NOS. 10097, 10105, and 10109

APPEAL OF CENTERPOINT ENERGY RESOURCES CORP., D/B/A CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS FROM THE ACTIONS OF THE CITIES OF ANGLETON, BAYTOWN, FREEPORT, LEAGUE CITY, PEARLAND, SHOREACRES, WEST COLUMBIA, AND WHARTON, TEXAS

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PROCEDURAL HISTORY:

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STATEMENT OF THE CASE

CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint") provides retail natural gas services to approximately 250,684 customers within its Texas Coast Division. This docket involves CenterPoint's appeal from the denials by the Texas Coast Utilities Coalition ("TCUC") of CenterPoint's 2011 Cost of Service Adjustment ("COSA") filings made with the TCUC cities for the 2010 calendar year. As initially filed, CenterPoint requested a COSA that would result in an overall revenue increase for the affected services areas of $59,317. CenterPoint agreed to certain changes in parallel proceedings before the Commission which resulted in an overall revenue decrease of ($84,734). CenterPoint seeks approval in this appeal docket of rates that would result in an annual revenue decrease of ($84,734), mirroring the Commission's decision in the parallel proceedings.

The TCUC cities principal objection to the COSA adjustment was that the COSA – 3 tariff is not valid pursuant to the provisions of the Gas Utility Regulatory Act ("GURA"). This objection is outside the scope of a COSA adjustment proceeding. The TCUC cities also made two specific requests regarding the COSA adjustment to adjust pension costs and severance expense. The adjustments disregard the entries recorded on the company's annual report. Thus, the requested change would be outside the limits imposed by the COSA tariff. Accordingly, the Examiners recommend that the proposed adjustments be rejected. In briefs filed after the hearing, the TCUC municipalities also made unsubstantiated claims that the company failed to comply with the affiliate transaction standards of GURA.

The Examiners find that CenterPoint has established that the proposed COSA adjustment is just and reasonable and that it is consistent with the provisions of the COSA tariff and Commission precedent. Additionally, the company has established that its rate case expense request, including actual and estimated expenses, of $101,959.50 is just and reasonable and that it is entitled to recover amounts reimbursed to the TCUC municipalities in the amount of $10,304.43. TCUC has not established that its rate case expense request of $44,579.04 is just and reasonable. Accordingly, the Examiners recommend that its requested rate case expense recovery be rejected.

TABLE OF CONTENTS

PROPOSAL FOR DECISION

1. Procedural History

CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint") provides natural gas distribution service to approximately 1.5 million residential, commercial, and industrial natural gas distribution customers in the state of Texas. Within its Texas Coast Division, CenterPoint provides retail natural gas services to approximately 250,684 customers.[1]

CenterPoint made a filing pursuant to its Cost of Service Adjustment ("COSA") tariff within the Texas Coast Division. Two COSA tariffs apply within the Texas Coast Division: COSA – 2 and COSA – 3. The COSA – 2 tariff was approved by several municipalities in 2008. The COSA – 3 tariff was approved by the Commission in the Final Order issued in GUD No. 9791, *Statement of Intent Filed by CenterPoint Energy Entex to Increase the Rates in the Unincorporated Areas of the Texas Coast Division and all Consolidated Municipal Appeals* ("GUD No. 9791").[2] The COSA – 3 tariff is applicable to several municipalities and to all unincorporated areas of the Texas Coast Division within the Commission's original jurisdiction.[3]

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[1] CenterPoint Ex. 1, p. 1; CenterPoint Ex. 2, p. 1; and, CenterPoint Ex. 3, p. 1

[2] On March 6, 2008, CenterPoint filed with the Commission and each of the municipalities within the Texas Coast Division a Statement of Intent to Increase rates. The company included a request that a COSA tariff be approved. Many municipalities denied the requested rate change and the proposed COSA tariff. CenterPoint appealed. Two separate municipal coalition were formed. The Gulf Coast Coalition of Cities ("GCCC") and the Texas Coast Utilities Coalition ("TCUC"). The GCCC municipalities and the company reached a settlement that implemented new rates, including a COSA – 2 tariff. CenterPoint Ex. 4, p. 5, lns. 8 – 17.

[3] A copy of the COSA – 3 tariff is attached to this Proposal for Decision as Appendix 1.

On April 29, 2011, CenterPoint made a filing pursuant to the applicable COSA tariff with the regulatory authorities exercising jurisdiction over the Texas Coast Division. Certain municipal jurisdictions ceded jurisdiction to the Commission pursuant to Section 103.003 of the Gas Utility Regulatory Act ("GURA").[4] The COSA filings applicable to the municipalities that adopted the COSA – 2 tariff and that ceded jurisdiction to the Commission were docketed as GUD No. 10075. Those municipalities include the following: The cities of Danbury, El Lago, Hitchcock, Jones Creek, and Richwood, Texas. The COSA filing applicable to the municipality that adopted the COSA – 3 tariff and that ceded jurisdiction was docketed as GUD No. No. 10073. That municipality was the City of Weston Lakes, Texas. The COSA filing applicable to the environs within the Commission's original jurisdiction was docketed as GUD No. 10074.

The municipalities that did not cede jurisdiction, where the COSA – 2 tariff is applicable, are part of the Gulf Coast Coalition of Cities ("GCCC"). The municipalities that did not cede jurisdiction, where the COSA – 3 tariff is applicable, are part of the Texas Coast Utilities Coalition ("TCUC"). All GCCC and TCUC municipalities denied the requested adjustment filed pursuant to the applicable COSA tariff. CenterPoint appealed those decisions. The appeals for the actions of the GCCC municipalities were docketed as GUD No. 10106. The appeals from the action of the TCUC municipalities were docketed as GUD Nos. 10097, 10105, and 10109. This proceeding relates to the actions of the TCUC municipalities. Table 1, provides a summary of the applicability of the COSA tariffs within the Texas Coast Division, the procedural mechanism of approval, and

[4] A municipality may elect to have the Railroad Commission exercise exclusive original jurisdiction over gas utility rates, operations, and services in the municipality by ordinance or by submitting the question of surrender of its jurisdiction to the voters at a municipal election. Tex. Util. Code Ann. § 103.003(a).

each proceeding related to those filings docketed at the Commission related to the 2010 COSA-tariff adjustments.

Table 1
COSA Tariff and
Docketed COSA Proceedings at the Commission Related to
2011 COSA Filings for the 2010 Calendar Year

COSA – 2		COSA -3		
Approved by Municipalities[5]		Approved in GUD No. 9791[6]		Approved in GUD No. 9791
Alvin, Clear Lake Shores, Danbury, *Dickinson,* El Lago, *Friendswood,* Hitchcock, Jones Creek, *Kemah, La Marque, Lake Jackson, Manvel, Mont Belvieu, Morgan's Point,* Richwood, *Rosenberg, Santa Fe, Seabrook, Sugar Land, Taylor Lake Village,* and *Texas City*		*Angleton, Baytown, Freeport, League City, Pearland, Shoreacres, West Columbia,* Wharton		Environs
Ceded Jurisdiction to Commission		Ceded Jurisdiction to Commission		Commission Original Jurisdiction
Danbury, El Lago, Hitchcock, Jones Creek, Richwood.	GUD No. 10075 Final Order July 26, 2011	Weston Lakes	GUD No. 10073 Final Order July 26, 2011	GUD No. 10074 Final Order July 26, 2011
GCCC denied COSA – 2 Filing Appeal Filed August 10, 2011 GUD No. 10106		TCUC denied COSA – 3 Filing Appeal Filed June 8, 2011, August 10, 2011 & August 25, 2011 GUD Nos. 10097, 10105, 10106		

This case involves the appeals from the TCUC denials of the COSA – 3 tariff filing, highlighted on Table 1 in yellow. As noted above, and on Table 1, the rates at issue in this docket have been reviewed by the Commission in GUD Nos. 10073 and 10074. A final order was issued in those proceedings on July 26, 2011.

The hearing on the merits was held October 20, 2011, for the purpose of submitting stipulated evidence. The parties agreed to waive cross examination of the witnesses. CenterPoint presented written testimony from Kelly C. Gauger, Director, Financial Accounting for CenterPoint and Scott Doyle, Division Vice President – Regional Operations for CenterPoint. Jacob Pous provided written

[5] GCCC Municipalities are in italics. As noted in footnote 2, above, these municipalities adopted the COSA – 2 as part of a settlement that implemented new rates at the time that the Statement of Intent was filed with the various municipalities that resulted in the appeal in GUD No. 9791.
[6] TCUC Municipalities are in italics.

testimony on behalf of the TCUC. Additionally, the parties submitted evidence in support of the rate case expense request.

2. Jurisdiction

The Commission has jurisdiction over the applicant, associated affiliates, and over the matters at issue in this proceeding pursuant to Tex. Util. Code Ann. §§ 102.001, 103.003, 103.051, 104.001, 121.051, 121.052, and 121.151 (Vernon 2007 and Supp. 2010). The statutes and rules involved in this proceeding include, but are not limited to Tex. Util. Code Ann. §§ 104.101, 104.102, 104.103, 104.105, 104.106, 104.107, 104.110, 104.301, and 16 Tex. Admin. Code Chapter 7.

3. Books and Records

Commission Rule 7.310 requires that utilities adopt the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USOA").[7] Kelly Gauger, Director of Financial Accounting affirmed that the books and records are kept in accordance with the FERC USOA. Specifically, Ms. Gauger testified that to ensure that transactions are properly recorded, CenterPoint maintains an internal process to make certain that financial statements are fairly presented and are in compliance with applicable laws and regulations. Accordingly, she asserted that the company's systems of internal controls and its adherence to FERC USOA assured compliance with Commission Rule 7.310. As a result, Ms. Gauger concluded that the company is entitled to the presumption encapsulated in Commission Rule 7.503.[8] That rule provides that the amounts shown on the company's books and records as well as summaries and excerpts taken from those records shall be considered *prima facie* evidence of the amount of

[7] TEX. ADMIN. CODE § 7.310 (Tex. R.R. Comm'n, System of Accounts) (Commission Rule 7.310);.
[8] TEX. ADMIN. CODE § 7.501 (Tex. R.R. Comm'n, Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities) (Commission Rule 7.503).

investment or expense reflected when introduced into evidence, and such amounts are presumed to have been reasonably incurred.[9] Accordingly, the books and records are accorded the presumption found in Commission Rule 7.503.

4. Scope of the Proceeding and Overview of the Company's Rate Request

The scope of this proceeding is limited by the COSA – 3 tariff. The tariff established a procedure whereby CenterPoint annually proposed adjustments to its Texas Coast Division customer charges for natural gas distribution services based upon the fundamental rate components established in GUD No. 9791. Among the components established in the COSA tariff are the appropriate allocation of corporate expenses, depreciation rates, the rate of return, the allocation of costs among classes of customers, and rate design. To the extent that CenterPoint would seek to adjust those components, the utility would not be able to alter those components in the context of a filing made pursuant to the COSA tariff. Likewise, the regulatory authority may not undertake a re-evaluation of the terms of the COSA tariff within the context of a utility-initiated COSA filing.[10]

Calculation of the COSA rate adjustment is to be based upon calendar year operating expenses. The calendar year operating expenses are those reported to the Commission in the annual report filed by CenterPoint. The COSA tariff requires that schedules of changes provided to the regulatory authority be based upon the company's audited financial data, as adjusted.[11]

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[9] CenterPoint Exhibit 5, Direct Testimony of Kelly Gauger, pp. 3 – 5.
[10] In order to revisit the rates established within the COSA tariff, a regulatory authority having jurisdiction over CenterPoint may initiate a rate proceeding to reevaluate all of the rate components and costs of the utility. Similarly, CenterPoint may initiate a full rate proceeding to undertake a reexamination of all rate components.
[11] COSA – 3 Tariff, p. 1, paragraph 3.

Pursuant to the provisions of the COSA tariffs the regulatory authorities may challenge those expenditures to determine whether the calendar year expenditures are (1) used and useful; (2) reasonable and necessary; (3) conform to the affiliate transaction standard; or, (4) violate any limitation related to legislative advocacy, charitable or civic contributions.[12]

On the other hand, the following issues are not within the scope of a COSA tariff proceeding:

(1) Depreciation method;[13]
(2) Allocation of corporate expenditures;
(3) Allocation of costs among customer classes;
(4) Rate design;
(5) Calculation of rate base premised upon the 13-month average materials and supplies inventories and prepayments; and
(6) Rate of return.[14]

The first four elements each represent a methodological factor that is applied to the costs of the utility in subsequent COSA filings. In mathematical terms the "methodological factor" is a number that is multiplied to the costs. The fifth element, the use of a 13-month average, represents a determination regarding the proper calculation of rate base, i.e., a mathematical formula for the calculation of rate base. The rate of return is the allowable rate of return determined in GUD No. 9791 which mathematically is applied as a factor to the utility's overall rate base. The *factor* or mathematical formula – the rate encompassed in the COSA tariff – is

[12] This is only a representative list of issues and is not intended to be an exhaustive list of all potential issues in a COSA proceeding.

[13] Indeed, even in the absence of the COSA tariff it is arguable that the depreciation methods and lives may not be subject to re-litigation in a subsequent proceeding. *See, City of Amarillo v. Railroad Comm'n of Texas*, 894 S.W.2d 491, 501 (Tex. App – Austin, 1995, writ denied). The Austin Court of Appeals held that the doctrines of *res judicata* and collateral estoppel prohibit a utility or protestant unhappy with the Commission's determination of depreciation rates from perennially resurrecting the issues without first proving that circumstances have changed.

[14] The COSA rate of return is specific to the utility at issue in this case. In *Reliant Energy, Inc. v. Public Util. Comm'n,* 153 S.W.3rd 174, 192 – 198 (Tex. App – Austin, 1995, no pet.), the Austin Court of Appeals held that a rate of return determined

not at issue in this proceeding. On the other hand, the *costs* included in the COSA filing, to which that factor or mathematical formula may be applied, are at issue. The utility must establish that those costs are just and reasonable as required by section 104.051 of the Gas Utility Regulatory Act and those costs will be subject to a full evaluation in a COSA-tariff proceeding.[15]

COSA was intended, in part, to provide a streamlined process as the utility's underlying costs changed to protect the regulated customer from rate case expenses. Thus, for example, it is a process to avoid the expenses associated with the proceeding in GUD No. 9791 which resulted in **$1,801,307** in rate case expenses.[16] Utilities incurred the following rate case expenses in prior rate proceedings: **$1,933,272** for GUD No. 9762;[17] **$2,934,658** for GUD No. 9902[18]; **$9,708,038** for GUD No. 9670;[19] **$10,122,345** for GUD No. 9400.[20] These cases, which spanned from 2005 through 2010, resulted in **$26,499,620** in rate case expenses. Expenses that were ultimately borne by regulated customers. COSA was intended, in part, to protect customers from these expenditures and allow recovery of a utility's reasonable expenses.

CenterPoint is appealing in this proceeding the TCUC Cities' denial of the company's 2011 COSA adjustment. CenterPoint filed the same rate filing packages pursuant to its COSA – 3 tariff with the TCUC municipalities as it filed with the Commission for the areas under the Commission's original jurisdiction to

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in a generic proceeding was appropriately applied to a specific utility based, in part, on the authority of the Public Utility Commission to manage its docket.

[15] *See*, CenterPoint Ex. 4, Direct Testimony of Scott E. Doyle, p. 4, ln. 18 – p. 5, ln. 7.

[16] Tex. R.R. Comm'n *Rate Case Expenses Severed from GUD No. 9791*, Docket No. 9811 (Gas Utils. Div. July 19, 2010), Final Order, Findings of Fact Nos. 11 & 12.

[17] Tex. R.R. Comm'n, *Severed Rate Case Expenses from Docket No. 9762,* Docket No. 9787 (Gas Utils. Div. June 9, 2010).

[18] Tex. R.R. Comm'n, *Severed Rate Case Expenses from Docket No. 9902,* Docket No. 9954 (Gas Utils. Div. July 19, 2010).

[19] Tex. R.R. Comm'n, *Severed Rate Case Expenses from Docket No. 9670,* Docket No. 9695 (Gas Utils. Div. Feb. 12, 2008).

[20] Tex. R.R. Comm'n, *Severed Rate Case Expenses from Docket No. 9400,* Docket No. 9517 (Gas Utils. Div. March 5, 2005).

which the COSA – 3 tariff applies.[21] As initially filed, the company proposed a $14.79 customer charge for residential customers, a $13.86 customer charge for general small customers, and a $14.69 rate for general service large customers. By the terms of the COSA – 3 tariff, the commodity charge is not affected by this proceeding. Therefore, the rates to be charged customers, pursuant to the proposed rates, are set forth in Table 2 below.

Table 2
Initial Rates Requested

	Residential	General Service Small	General Service Large
Customer Charge	$14.79	$13.86	$14.69
Commodity Charge	$0.03055 Ccf	First 50 Ccf: $0.06655 Ccf Over 50 Ccf: $0.06655 Ccf	First 1,500 Ccf: $0.09036 per Ccf 1,500 – 10,000 Ccf: $0.05880 per Ccf Over 10,000 Ccf: $0.04980 per Ccf

Pursuant to the provisions of the COSA tariffs related to rate design, any change in rates is incorporated exclusively in the customer charge. Thus, the commodity rate is not within the scope of this proceeding. In the proceedings before the Commission, the Commission ultimately approved rates that were lower than requested. As a result of those changes the rates charged to CenterPoint's customers pursuant to that order are set forth in Table 3.

Table 3
Rates Requested Approved by the Commission in GUD Nos. 10073 & 10074

	Residential	General Service Small	General Service Large
Customer Charge	$14.77	$13.84	$14.40
Commodity Charge	$0.03055 Ccf	First 50 Ccf: $0.06655 Ccf Over 50 Ccf: $0.06655 Ccf	First 1,500 Ccf: $0.09036 per Ccf 1,500 – 10,000 Ccf: $0.05880 per Ccf Over 10,000 Ccf: $0.04980 per Ccf

[21] CenterPoint Ex. 4, Direct Testimony of Scott E. Doyle, p. 2, ln. 16 – p. 3, ln. 4.

CenterPoint requested that those rates be adopted in this proceeding.[22] TCUC argued that the rates approved by the Commission should be adjusted further.

5. Municipal Ordinances

The applicable ordinances did not specifically delineate the items at issue. They generally indicated that the TCUC municipalities denied the company's proposed adjustments because CenterPoint failed to carry its burden of proof and meet the requirements of GURA. Mr. Doyle, on behalf of CenterPoint contended that the ordinances offered no specifics. Instead they referred to certain general ratemaking issues typically litigated in a full cost of services review, including affiliate transactions, proposed cost of capital, proposed rate design, proposed treatment of accumulated deferred income tax, proposed cash working capital and proposed pension expense.[23] Figure 1 below is an excerpt from the ordinance issued by the City of Baytown and is typical of the municipal ordinances issued by all of the TCUC municipalities:

Figure 1
Excerpt from City of Baytown Municipal Ordinance Denying CenterPoint Request

WHEREAS, CenterPoint failed to carry its burden of proof and meet the requirements of the Gas Utility Regulatory Act as necessary to warrant a change in rates, by failing to meet the requirements of the Gas Utility Regulatory Act in several areas of its rate request, including, but not limited to the following areas:

a. CenterPoint's expenses related to its Affiliate Transactions;
b. CenterPoint's proposed cost of capital, including its Return on Equity, its Cost of Debt, its Capital Structure, and its overall Rate of Return;
c. CenterPoint's proposed Rate Design;
d. CenterPoint's proposed treatment of Accumulated Deferred Income Tax;
e. CenterPoint's proposed calculation of its Cash Working Capital; and
f. CenterPoint's proposed calculation of its Pension Expense; and

WHEREAS, the 345th Judicial District Court of Travis County, Texas in Cause No. D-1-GN-09-000982, *Texas Coast Utilities Coalition vs. The Railroad Commission of Texas*, Judge Stephen Yelenosky presiding, issued a Judgment concluding that the Railroad Commission of Texas did not have the authority to impose the COSA-3 tariff on the City and did not have the authority to approve a COSA-3 tariff in those areas where the Railroad Commission of Texas had original jurisdiction; NOW THEREFORE,

[22] CenterPoint Ex. 4, Direct Testimony of Scott E. Doyle, p. 3, lns. 12 – 16.
[23] CenterPoint Ex. 4, Direct Testimony of Scott E. Doyle, p. 6, lns. 4 – 15.

The Examiners find that all of the issues raised in the municipal ordinances relate to issues specifically precluded from consideration in these proceedings pursuant to the COSA tariffs. None of the issues noted in the ordinance point to a specific calendar year operating expense.

6. Expenses

a. Pension Expense

TCUC pointed out that CenterPoint requested $915,487 in pension expense based upon an actuarial analysis. This amount was actuarially determined in accordance with generally accepted actuarial principals. Mr. Pous reviewed the company's historical pension expense, as calculated by the actuarial analysis, and concluded that the annual levels fluctuated greatly from year to year. Between 2006 and 2010, the pension expense fluctuated from ($94,076.92) to $1,188,861.44. Mr. Pous proposed to normalize that expense. Instead of a pension expense of $915,487, Mr. Pous requested a pension expense of $584,400.[24]

He argued that the adjustment was necessary because the value of the investments related to the company's pension plan varies based on investment market conditions and various assumptions within the actuarial analysis based on generally accepted principles. He also contended that the adjustment was necessary to ensure consistency with the Commission's decision in GUD No. 9902, *Statement of Intent of CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas to Increase Rates on a Division-Wide Basis in the Houston Division* ("GUD No. 9902"). He maintained that given the volatility in the markets, the Commission has previously determined that it is inappropriate to rely on the snapshot results of an actuarial

[24] TCUC Ex. No. 1, Direct Testimony of Jacob Pous, p. 10, ln. 10 – p. 11, ln. 6.

analysis for ratemaking purposes.[25] Three findings of fact were made in that case related to the pension expense request:

> The pension expense for the test-year ended March 31, 2009, was $836,915. CenterPoint proposed a post test-year adjustment of $4,549,789. The proposed adjustment is not reasonable.[26]
>
> The proposed adjustment to pension expense was the result of a projected benefit obligation that is not known and measurable. Improvements in the economy will change the benefit obligation and CenterPoint has not taken this into account.[27]
>
> The proposed adjustment to pension expense places the entire burden of the loss on the ratepayer, even though CenterPoint manages the funds and decisions made by the utility compounded the losses experienced in the fund.[28]

In response to the issues raised by Mr. Pous, Ms. Gauger explained that CenterPoint included in its COSA – 3 filing the amount of pension expense actually booked during calendar year 2010. She argued that this is consistent with previous filings, the COSA – tariff requirements and that this treatment was approved by the Commission in GUD Nos. 9872, 9985, and 10074.[29]

She also responded to the contention raised by Mr. Pous that pension expenses are not "known and measurable." She argued that in her experience actuarial analysis is the common method by which pension expense is derived and is established by generally accepted accounting principles.[30]

Ms. Gauger also responded to the contention that the adjustment was necessary to align the pension expense proposal with the decision made in GUD

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[25] TCUC Ex. No. 1, Direct Testimony of Jacob Pous, p. 12, ln. 7 – p. 13, ln. 21.
[26] GUD No. 9902, Final Order, Finding of Fact No. 67.
[27] GUD No. 9902, Final Order, Finding of Fact No. 68.
[28] GUD No. 9902, Final Order, Finding of Fact No. 69
[29] CenterPoint Ex. 6, Rebuttal Testimony of Kelly C. Gauger, p. 3, ln. 6 – p. 4, ln. 12.
[30] CenterPoint Ex. 6, Rebuttal Testimony of Kelly C. Gauger, p. 4, ln. 20 – p. 5, ln. 9.

No. 9902. First, she noted that GUD No. 9902 was a *Statement of Intent* proceeding – not a COSA tariff adjustment. Second, she contended that the pension issue in that case revolved around a post-test-year adjustment to pension expense.

The Examiners find that CenterPoint has established that the proposed pension expense is just and reasonable and consistent with Commission precedent, including GUD No. 9902. In that proceeding, CenterPoint's test-year expense associated with the retirement plan was $836,915. No party, including the City of Houston, who presented testimony by Mr. Pous on this issue, argued that the actuarial expense amount recorded in the company's books and records should be rejected. Instead, the issue centered upon whether a post-test-year adjustment in the amount of $4,549,789 should have been made. That is not the issue here.[31] Furthermore, Mr. Pous did not challenge the method of calculating the test-year pension expense in that case. In fact, his pension expense recommendation in that case was founded upon the company's calculation of test-year pension expense that, in turn, was based upon the actuarial expense amount. Ultimately, the proposed adjustment is contrary to the tariff provisions of the COSA – 3 tariff that require that the adjustment be based upon calendar year operating expenses.

b. Severance Expense

CenterPoint included $12,000 in severance expense in its revenue requirement calculation. TCUC contended that this was inappropriate for ratemaking purposes and should not be recovered from customers. Mr. Pous

[31] As stated in the Proposal for Decision: "The company's retirement plan . . . expense was determined based upon the actuarial expense amount required by generally accepted accounting principles . . . . The test-year expense amount required associated with the retirement plan was $836,915 . . . . Mr. Pous recommended a more modest adjustment to the test-year figure. Instead of $4,549,789 adjustment to the test-year pension expense of $839,915, Mr. Pous suggested an increase in the amount of $940,214." Proposal for Decision, p. 50.

contended that in GUD No. 9791, the Commission denied CenterPoint the recovery of severance expense in rates. He argued that the Commission found such cost to be unreasonable for ratemaking purposes based on the non-recurring nature of such costs.

Mr. Pous noted that in GUD Nos. 10073 and 10074 the Commission included the following in Exhibit A of the Final Order:

> In GUD No. 9791, the Commission used an average of five years of uncollectible expense in calculating the cost of service and excluded non-recurring severance expense from the calculation of recurring rates. To date, however, the Commission has not adjusted for these items in the COSA cost of service formula.

He argued that there is no basis supporting the inclusion of such non-recurring expense in this case. Thus, he concluded that it is reasonable and necessary to exclude this non-recurring expense from the revenue requirement.[32]

In response to the contentions raised by TCUC, CenterPoint noted that the Commission has previously approved the inclusion of actual severance expense in prior COSA – 3 adjustment dockets. Furthermore, the Commission has also approved those expenses in GUD Nos. 10073 and 10074. Ms. Gauger noted that while the amount of severance expense may be non-recurring from year to year it is highly likely that the company will incur some severance expense on an annual basis. The company does not dispute that the expense was excluded from GUD No. 9791 but notes that that proceeding was a full *Statement of Intent* case.[33]

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[32] TCUC Ex. 1, Direct Testimony of Jacob Pous, p. 14, ln. 4 – p. 15, ln. 6.
[33] CenterPoint Ex. 6, Direct Testimony of Kelly C. Gauger, p. 6, ln. 21 – p. 8, ln. 10.

The Examiners find that the inclusion of severance expense in the context of a COSA-tariff adjustment is just and reasonable. As noted by CenterPoint in briefing, the COSA – 3 tariff requires that the annual COSA adjustment include actual calendar year expenses as reported to the Commission.[34] In this regard the process is distinguishable from the *Statement of Intent* process. The company correctly noted that the level of expense may change from year to year. In fact, in the last COSA – 3 – adjustment, the company included $22,948.

c. Affiliate Transactions

TCUC did not raise any issues regarding affiliate transactions in prefiled testimony or at the hearing on the merits. The issue of affiliate transactions was raised for the first time in its Initial Brief. CenterPoint argued, in response to a Request for Information propounded by the Examiners that extensive evidence was provided in GUD No. 9791, the case that approved the COSA tariff, regarding affiliate transactions.

The nature of the affiliate transaction in this proceeding has not changed and the evidence provided in GUD No. 9791 in support of those transactions supports the transaction in this proceeding and provides a basis for the findings required by Section 104.055(b) of the GURA. The evidence provided, and admitted into the record of this case, is that services are provided to the Texas Coast Division by CenterPoint Energy Services Company, Inc., CenterPoint Energy Houston Electric, LLC, and other divisions of CenterPoint Energy Resources Corp. As noted by Ms. Gauger, if a service can be specifically identified as being solely for the benefit of the Texas Coast Division, the costs are assigned 100% to the Texas Coast Division. However, the vast majority of affiliate service billings are allocated to the Texas

[34] CenterPoint Initial Brief, p. 7.

Coast Division based on customer ratios.[35] The ratios that were approved in GUD No. 9791 have been applied in this proceeding, as required by the COSA – 3 tariff.

The evidence in this proceeding is that the services provided by CenterPoint's affiliates are reasonable and necessary. They include Executive Management functions, Finance, Audit Services, Legal, Human Resources, Government Affairs, Communications, Information Technology, Business Support Services, Regulated Operation's Management, data circuit management, land base management, scanning and indexing services, billing support, customer and marketing services, engineering services, meter shop operations, environmental compliance, financial planning and reporting services, administrative oversight, gas volume administration services, gas supply and transportation, and logistic services.[36] The Examiners find that these are all services that are reasonable and necessary to the provision of safe and reliable natural gas service. Furthermore, the company has established that the prices charged to CenterPoint are no higher than the prices charged for the same service other affiliates or divisions or to non-affiliated persons.[37]

7. Termination of COSA – 3

As noted above, the COSA – 3 tariff was initially approved by the Commission in GUD No. 9791. By its terms, the COSA – 3 tariff has an initial period of three years beginning August 1, 2009 and ending July 31, 2012. The COSA – 3 tariff, at Paragraph A, provides that the COSA – 3 tariff is automatically renewed for successive three-year periods unless either CenterPoint or a regulatory authority with original jurisdiction notifies the other by February 1st of the third year of any three-year period of the non-renewal of the COSA tariff for the

[35] Examiners' Ex. 3, GUD 9791, Direct Testimony of Kelly C. Gauger, p. 9, ln. 6 – p. 10, ln. 10.
[36] *Id.*
[37] Examiners' Ex. 3, GUD No. 9791, Direct Testimony of Kelly C. Gauger, p. 10, ln. 17 – p. 12, ln. 20.

subsequent three-year period. On February 1, 2011, CenterPoint received notice that the following Texas Coast Division cities opted not to renew the applicable COSA tariff beyond the initial three-year term: Angleton, Baytown, Clute, Shoreacres, and Wharton.[38]

8. Rate Case Expenses

Rule 7.5530 provides that in any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to Texas Utilities Code, §103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Each gas utility and/or municipality shall detail and itemize all rate case expenses and allocations and shall provide evidence showing the reasonableness of the cost of all professional services, including but not limited to:

(1) the amount of work done;
(2) the time and labor required to accomplish the work;
(3) the nature, extent, and difficulty of the work done;
(4) the originality of the work;
(5) the charges by others for work of the same or similar nature; and
(6) any other factors taken into account in setting the amount of the compensation.

Furthermore, Commission rules mandate that in determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out previously, and shall also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work

[38] GUD No. 10073 and 10074, Findings of Fact Nos. 61 – 65.

was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted.

CenterPoint and the TCUC municipalities submitted evidence in support of their respective rate case expenses. The Examiners find that CenterPoint has established that its rate case expense request is just and reasonable and recommend that the utility be allowed to recover its expenses through a separate surcharge to be recovered from the customers within the TCUC municipalities. The Examiners' find that the TCUC municipalities expenses for their initial review, in the amount of $10,302.43 is reasonable. CenterPoint has already reimbursed the municipalities those amount and it is reasonable that CenterPoint be permitted to recover those amounts through a separate surcharge to be recovered from the customers within the TCUC municipalities.

In all other respects, the Examiners find that the TCUC municipalities' remaining rate case expense request is not just and reasonable and recommend that that those expenses be denied for two reasons. First, the amount of rate case expenses incurred in this rate *decrease* proceeding is not just and reasonable. Second, the issues raised by the TCUC municipalities are outside the scope of this proceeding and was not relevant and reasonably necessary to these proceedings. As set out in Rule 7.5530 this is a proper basis for rejection of rate case expenses. The principle argument of the TCUC municipalities is that the COSA tariff is not valid under GURA. This is an issue that is subject to appeal in a separate proceeding and outside the scope of this proceeding. Furthermore, the two actual adjustments proposed are not contemplated by the COSA tariff. The tariff requires that the adjustments be calculated based upon calendar year operating expenses.

The TCUC municipalities contended that the total rate case expense required, including actual and estimated expenses to complete this proceeding, is $254,881.47. CenterPoint requested approval of total rate case expenses, including actual and estimated expenses required to complete this proceeding, of $101,959.56. Thus, the total rate case expense requested by the parties to this proceeding is $356,841.03. The Examiners find that this rate case expense request dwarfs the revenue change initially requested by the company and it vastly reduced the potential revenue change contemplated by TCUC.

As initially proposed, the company requested a change in rates that resulted in an increase in revenues of $59,317. The amount of rate case expense requested exceeds this amount by $297,524.03. Even in the context of the revenue change recommended by TCUC, the amount does not appear reasonable. TCUC recommended a reduction to current revenues of $431,286. This was a change from the original request of $490,603. The rate case expense request would eliminate nearly 61% of the proposed adjustment to the company's initially requested revenues. Once the rate case expenses are incorporated into the proposed rates, the rates for customers would result in an overall revenue decrease of only $133,762.

The analysis in the previous paragraphs is based upon the total rate case expense request. Table 4, below, provides a breakdown of the rate case expense request between actual and estimated expenses.

Table 4
Rate Case Expense Request

Party	Initial Filing Actual	Actual Appeal	Estimated	Total/Party
CenterPoint	$5,790.22	$61,169.34	$35,000.00	$101,959.56
TCUC	$10,302.43	$44,579.04	$200,000.00	$254,881.47
Totals	$16,092.65	$77,115.48	$235,000.00	$356,841.03

Limiting the analysis to actual expenses to date produces the same result. The rate case expenses incurred to date by TCUC, its actual expenses, are $54,881.47. The rate case expenses incurred to date by CenterPoint are $66,959.56. Thus, the total actual rate case expenses of $121,841.03 far exceed the initially proposed revenue increase of the company.

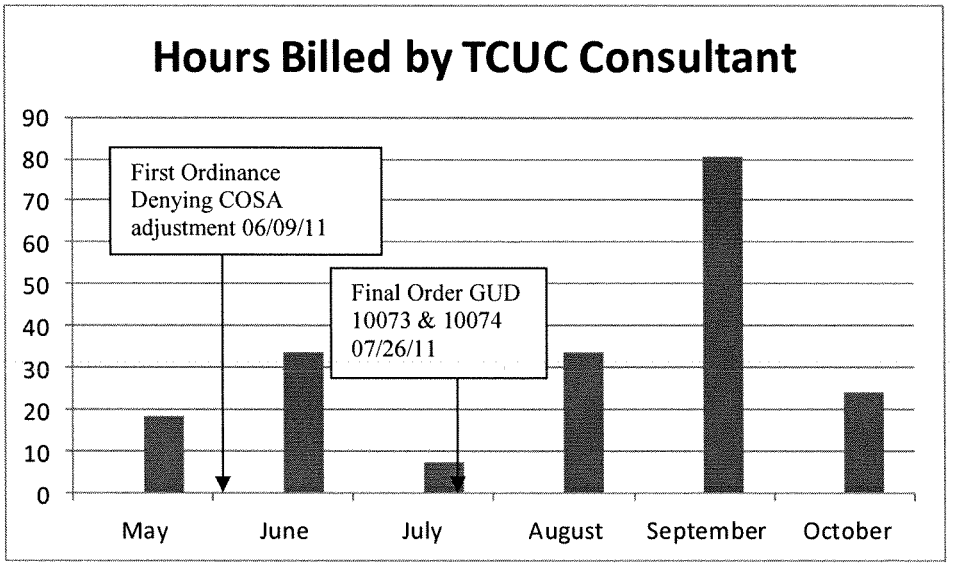
Thus far, the discussion has centered upon the initially proposed increase of the company. As discussed in this *Proposal for Decision*, CenterPoint has requested that the Commission approve the rates in this proceeding that were approved in GUD Nos. 10073 and 10074. The Final Order in those cases was entered on July 26, 2011. The bulk of the work done by TCUC in this proceeding occurred after August 1, 2011. By then all parties were aware that this proceeding involved a revenue *decrease* of $84,734.

Included in TCUC's rate case expense request are the expenses of the consultants in the amount of $28,632.90.[39] The bulk of the hours billed by those consultants occurred after entry of the July 26, 2011 Final Order in GUD Nos. 10073 and 10074. Based upon the evidence provided, approximately 70% of all

[39] Examiners' Ex. 2, Rate Case Expense Request of TCUC, TCUC Rate Case Summary.

billable hours were recorded after that date. This is graphically illustrated in Figure 1.

Figure 1



Thus, approximately $20,000 of the $28,632.90 was billed after it was clear that this case involved a rate decrease.[40] The attorneys for TCUC billed $15,946.14 after it was clear this case was a proceeding about a rate decrease. Total billings by TCUC after it was established that this case involved a rate decrease was $44,579.04. From TCUC alone, this nearly cuts in half the rate decrease under consideration. Once the expenses that occurred after July of 2011 of the utility are taken into account, in the amount of $50,957.61, then the rate decrease is eviscerated by the rate case expenses of the attorneys and consultants and the customers are required to pay an increase of $10,802.65.

Rule 7.5530 provides that the Commission may consider the amount of the increase sought as well as the amount of any increase granted. On that basis, the Examiners find that it is reasonable to disallow the expenses of the TCUC

[40] Examiners' Ex. 2, Rate Case Expense Request of TCUC, Time Log for Jacob Pous & Sara Coleman.

municipalities in this proceeding, as the expenses far exceed the decrease requested by the utility. The applicant, on the other hand, was required to respond to all arguments made by the TCUC municipalities. The amounts expended by CenterPoint to respond to the issues raised appear to be just and reasonable.

Additionally, the issues raised by the TCUC municipalities in this proceeding were outside the scope of a COSA tariff proceeding. Thus, the work was not necessary or reasonably necessary to this proceeding, as required by Rule 7.5530. For this reason the Examiners recommend that the rate case expense of the TCUC municipalities be rejected. As noted above, the municipalities appeared to reject the proposed COSA adjustment based upon issues that are outside the scope of a COSA-tariff proceeding. Nevertheless, the Examiners recommend that the TCUC municipalities be permitted to retain the reimbursed funds for the initial review. Those funds totaled $10,302.43.

The Examiners recommend that all other amounts be disallowed. Nearly all of the pre-filed testimony of the TCUC municipalities was outside the scope of a COSA-tariff proceeding. Much of that pre-filed testimony was related to arguments that parallel the arguments raised by TCUC in appellate proceedings related to GUD No. 9791. In those proceedings, the TCUC municipalities challenged the validity of the COSA tariff. The Third Court of Appeals handed down its Opinion in the appeal from the Commission' Order on Rehearing GUD No. 9791, establishing that the COSA – 3 tariff is legal, and that the COSA – 3 tariff is consistent with GURA.[41]

[41] A copy of that opinion is attached as Appendix B.

Of the 329 lines of testimony provided by TCUC's witness in this proceeding, approximately 157 pertain to issues regarding the legality of the COSA process. Thus, nearly half of the testimony pertained to issues outside the scope of the COSA review.[42] This was the subject of a motion to strike filed by CenterPoint. The motion to strike was subsequently granted. Furthermore, TCUC re-urged the stricken testimony at the hearing. This undoubtedly increased the rate case expenses. The same arguments were repeated in briefing filed by TCUC.

TCUC's Initial Brief included twenty pages of text. Of those pages, approximately three were dedicated to the substantive issues of the rate request discussed in sections 6, above. The rest was dedicated to a collateral attack of the Commission's determination in GUD No. 9791 that the COSA tariff is a valid mechanism under GURA. An issue re-urged, albeit more succinctly, in its Reply Brief after the Third Court of Appeals rendered its opinion that the Commission's delegated authority under GURA encompasses the power to adopt or impose the COSA clause in the Texas Coast Division.[43]

It should be noted, that every participant to a proceeding has the right to preserve their position on appeal in various cases. In fact, in GUD Nos. 10073 and 10074, CenterPoint accomplished this with the inclusion of the following language in the order that was ultimately entered by the Commission:

> "CenterPoint's agreement to cost of services adjustments and rate base adjustments in GUD Nos. 10073 and 10074 does not waive, modify, or otherwise compromise CenterPoint's position in any pending appeal."[44]

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[42] TCUC Ex. 1, Direct Testimony of Jacob Pous.
[43] *See, Railroad Commission of Texas et. Al. v. Texas Coast Utilities Coalition, et. al*, ___ S.W.3rd ___, No. 03-10-00242-CV, 2011 WL ___ (Tex. App. – Austin Oct. 27, 2011).
[44] GUD Nos. 10073 and 10074, Findings of Fact Nos. 42 & 52.

This is a cost effective method of preserving a party's position in any pending appeal.

The Examiners recommendation in this proceeding is consistent with the Commission's determination in the proceedings involving CenterPoint's previous COSA adjustment filings. *Appeal of CenterPoint Energy Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas from the Actions of the TCUC Cities (COSA-3)* GUD Nos. 10007 and 10018.[45] The rate case expense request that was ultimately not approved by the Commission is reproduced at Table 5.

Table 5
Rate Case Expense Request in GUD Nos. 10007 & 10017

Party	Actual	Estimated	Total/Party
CenterPoint	$70,741	$85,000	$155,741
TCUC	$44,117	$87,172	$131,290
Totals	$114,858	$172,172	$287,031

Thus, the total rate case expenses requested by the parties to process two COSA adjustment tariffs are $643,872. The total actual expenses were $207,939.13.

In summary, the Examiners recommend that CenterPoint be permitted to recover its rate case expenses. Furthermore, the Examiners recommend that CenterPoint be permitted to recover the expenses reimbursed to the cities for their initial review of the COSA adjustment pursuant to the provision of the COSA – 3 tariff. The Examiners recommend, however, that the rate case expense request of the TCUC municipalities, not already reimbursed to them by CenterPoint, be rejected. The result is that TCUC recovery is limited to $10,302.43 and that CenterPoint be permitted to recover its actual rate case expenses in the amount of

[45] A copy of the order issued in that case is attached as Appendix C and copy of the memorandum prepared by the Examiners in that case is attached as Appendix D.

$66,959.56, that it be allowed to recover $10,302.43 in expenses paid to the municipalities, and that it be allowed to recover its actual expenses to complete this proceeding up to $35,000.

9. Conclusion

CenterPoint has established that the proposed COSA adjustment is just and reasonable and that it is consistent with the provisions of the COSA tariff and Commission precedent. Additionally, the company has established that its rate case expense request, including actual and estimated expenses, of $101,959.50 is just and reasonable and that it is entitled to recover amounts reimbursed to the TCUC municipalities in the amount of $10,304.43. TCUC has not established that its rate case expense request of $44,579.04 is just and reasonable. Accordingly, the Examiners recommend that its requested rate case expense recovery be rejected.

Respectfully submitted,

Gene Montes
Hearings Examiner
Office of General Counsel

Lynne LeMon
Technical Examiner
Gas Services Division

C TERPOINT ENERGY RESOURCES C P.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
COST OF SERVICE ADJUSTMENT
RATE SCHEDULE NO. COSA-3

A. APPLICABILITY

This Cost of Service Adjustment Clause applies to the Residential Service, General Service - Small, and General Service - Large Volume rate schedules of CenterPoint Energy Texas Gas currently in force in the Company's Texas Coast Division service area. All rate calculations under this tariff shall be made on a Texas Coast Division system wide basis. If, through the implementation of the provisions of this mechanism, it is determined that rates should be decreased or increased, then rates will be adjusted accordingly in the manner set forth herein. The rate adjustments implemented under this mechanism will reflect annual changes in the Company's cost of service and rate base as computed herein. This Rate Schedule No. COSA-3 is authorized for an initial implementation period of three (3) years commencing with the Company's filing under this rate schedule for the calendar year 2008, effective August 1, 2009, and ending with the implementation of the rate adjustment, if any, for the calendar year 2010, effective August 1, 2011; and shall automatically renew for successive three year periods unless either the Company or the regulatory authority having original jurisdiction gives written notice to the contrary to the other by February 1, 2011, or February 1, of the third filing year of any succeeding three year renewal period.

B. EFFECTIVE DATE

Rate adjustments shall be made in accordance with the procedures described below on an annual basis. The Company shall make its annual filing no later than May 1, with the rate adjustments to be effective with the bills rendered on or after August 1st of each year. The first filing pursuant to this Rider shall be no later than May 1, 2009, and shall be based on the financial results for the calendar year ending December 31, 2008.

C. COMPONENTS OF THE RATE ADJUSTMENT

Calculation of the rate adjustment will be based on calendar year operating expenses, return on investment, and Texas Franchise Tax. The calendar year operating expenses shall be those reported to the Railroad Commission of Texas in the annual report of the Company. The rate adjustment shall be included in the monthly customer charge of the Residential Service, General Service - Small, and General Service - Large Volume rate schedules. Company shall file with each regulatory authority having original jurisdiction over the Company's rates the schedules specified below, by FERC Account, for the prior calendar year period. The schedules will be based upon the Company's audited financial data, as adjusted, and provided in a format that will allow for the same analysis as that undertaken of a Company Statement of Intent filing. Sample schedules are attached as Exhibit A to this tariff and shall include the following information:

C.1 Operating Expenses - Operating expenses will be determined by the ending amounts for the applicable calendar year.

The applicable expenses are:

Depreciation and Amortization Expense (Account Nos. 403-407)*
Taxes Other Than FIT (Account No. 408)**
Operation and Maintenance Expenses (Account Nos. 870-894)
Customer Related Expenses (Account Nos. 901-916)
Administrative & General Expenses (Account Nos. 920-932)
Interest on Customer Deposits (Account No. 431)

APPENDIX 1

* Based on the last approved depreciation methods and lives.
** Excluding City Franchise Fees, Gross Receipts, and any other revenue-based tax. Rate adjustments due to changes in revenue-based taxes will be governed by the Company's Tax Adjustment and Municipal Franchise Fee Rate Schedules.

C TERPOINT ENERGY RESOURCES C P.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
COST OF SERVICE ADJUSTMENT
RATE SCHEDULE NO. COSA-3

This information will be presented with supporting calculations. The Company shall provide additional information for all operating expenses upon request by the regulatory authority during the ninety (90) day review period specified in Section D.

C.2 Return on Investment - The return on investment is the pre-tax rate of return (11.8%) multiplied by the rate base balance for the applicable calendar year.

The rate base balance is composed of:

Net Utility Plant in Service*

Plus:

Other Rate Base Items:**
Materials and Supplies Inventories
Prepayments
Cash Working Capital

Less:

Customer Deposits (Account No. 235)
Customer Advances (Account No. 252)
Deferred Federal Income Taxes

* Net Utility Plant in Service as shown by FERC account adjusted to exclude asset retirement obligation amounts. Gross utility plant in service and accumulated depreciation by account will be shown separately by month so that an annual average utility plant in service can be calculated.

** These items will reflect the 13 month average materials and supplies inventories and prepayments. The Company shall perform a lead/lag study for the initial filing under this tariff and at least once every three (3) years thereafter.

Supporting information for all rate base items shall be provided to the regulatory authority during the ninety (90) day review period specified in Section D upon request to the Company.

C.3 Texas Franchise Tax - The Texas Franchise Tax will be the calendar year-end amount as recorded in FERC Account No. 409.

C.4 Cost of Service Adjustment The amount to be collected through the Cost of Service Adjustment will be the sum of the amounts from Sections C.1, C.2, and C.3, less the calendar year actual non-gas revenue and other revenue (i.e., transportation revenue and service charges), adjusted for the revised Texas Franchise Tax described in Chapter 171 of the Texas Tax Code.

The formula to calculate the Cost of Service Adjustment is:

(C.1 Operating Expenses + C.2 Return on Investment + C.3 Texas Franchise Tax - Actual non-Gas and Other Revenues) ÷ (1 - Texas Franchise Tax statutory rate)*

C ' TERPOINT ENERGY RESOURCES C P.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
COST OF SERVICE ADJUSTMENT
RATE SCHEDULE NO. COSA-3

* Currently, the Texas Franchise Tax statutory rate is 1%.

C.5 Cost of Service Adjustment Rate

The Cost of Service Adjustment as calculated in Section C.4 will be allocated among the customer classes in the same manner as the cost of service was allocated among classes of customers in the Company's latest effective rates for the Texas Coast Division. The cost of service adjustment for each customer class will then be converted into a per-customer per-month amount to produce the Cost of Service Adjustment Rate. The per customer adjustment will be the Cost of Service Adjustment as allocated to that class, divided by the average number of gas sales customers in each class for the Texas Coast Division as reported in the Company's annual report to the Railroad Commission of Texas. The Cost of Service Adjustment Rate will be this per customer adjustment amount divided by 12 to produce a monthly adjustment amount, either an increase or decrease, which will be included in the Residential Service, General Service - Small, and General Service - Large Volume customer charges. Any change in the Cost of Service Adjustment shall not exceed an amount equal to five percent (5%) of the Customer Charge effective for service in the Texas Coast Division at the end of the calendar year immediately preceding the year in which the Cost of Service Adjustment is made, provided that the costs for the Company to perform a lead-lag study, provide public notice and reimburse City rate case expenses as required herein, up to an amount not to exceed $250,000, shall not be included in calculating the (5%) limitation.

In order to meet Generally Accepted Accounting Principles and U.S. Securities and Exchange Commission reporting requirements, the Company shall record its best estimate of the total amount to be collected through the Cost of Service Adjustment so as to reflect in its books and records a fair representation of actual earnings for that year. Such estimate shall not be included in the computation of the Cost of Service Adjustment.

C.6 Attestation

A sworn statement shall be filed by the Company's Chief Accounting Officer of CenterPoint Energy Texas Gas Operations, affirming that the filed schedules are in compliance with the provisions of this tariff and are true and correct to the best of his/her knowledge, information, and belief. No testimony shall be filed.

C.7 Proof of Revenues

The Company shall also provide a schedule demonstrating the "proof of revenues" relied upon to calculate the proposed cost of service adjustment rate. The proposed rates shall conform as closely as practicable to the revenue allocation principles in effect prior to the adjustment.

C.8 Notice

Notice of the annual Cost of Service Adjustment shall be published in the Houston Chronicle in a form similar to that required under Section 104.103, TEX. UTIL. CODE ANN. no later than forty-five (45) days after the Company makes its annual filing pursuant to this rate schedule with the regulatory authority. The notice to customers shall include the following information:

a) a description of the proposed revision of rates and schedules;

b) the effect the proposed revision of rates is expected to have on the rates applicable to each customer class and on an average bill for each affected customer class;

c) the service area or areas in which the proposed rate adjustment would apply;

C 'TERPOINT ENERGY RESOURCES C P.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
COST OF SERVICE ADJUSTMENT
RATE SCHEDULE NO. COSA-3

d) the date the proposed rate adjustment was filed with the regulatory authority; and

e) the Company's address, telephone number, and website where information concerning the proposed cost of service adjustment may be obtained.

D. REGULATORY REVIEW OF ANNUAL RATE ADJUSTMENT

The regulatory authority with original jurisdiction will have a period of not less than ninety (90) days within which to review the proposed annual rate adjustment. During the review period, Company shall provide additional information and supporting documents as requested by the regulatory authority and such information shall be provided within ten (10) working days of the original request.

The rate adjustment shall take effect with the bills rendered on or after August 1st of each year. This Cost of Service Adjustment Rate Schedule does not limit the legal rights and duties of the regulatory authority. Nothing herein shall abrogate the jurisdiction of the regulatory authority to initiate a proceeding at any time to review whether rates charged are just and reasonable. The provisions of this Cost of Service Adjustment are to be implemented in harmony with the Gas Utility Regulatory Act (Texas Utilities Code, Chapters 101-105). The Company's annual rate adjustment will be made in accordance with all applicable laws. If at the end of the ninety (90) day review period, the Company and the regulatory authority with original jurisdiction have not reached agreement on the proposed Cost of Service Adjustment Rate, the regulatory authority may take action to deny such adjustment, and the Company shall have the right to appeal the regulatory authority's action. Upon the filing of any appeal the Company shall have the right to implement the proposed Cost of Service Adjustment Rate, subject to refund.

To defray the cost, if any, of regulatory authorities conducting a review of Company's annual rate adjustment, Company shall reimburse the regulatory authorities for their reasonable expenses for such review in an aggregate amount not to exceed $100,000. Any reimbursement contemplated hereunder shall be deemed a reasonable and necessary operating expense of the Company in the year in which the reimbursement is made. If more than one regulatory authority should request reimbursement in any year, each regulatory authority shall receive the lesser of its reasonable and necessary expenses for conducting its review or an amount equal to $100,000 multiplied by the fraction of which the numerator is the total number of customers subject to the original jurisdiction of the regulatory authority seeking reimbursement and the denominator of which is the total number of customers subject to the jurisdiction of all regulatory authorities seeking reimbursement for review of an annual rate adjustment.

A regulatory authority seeking reimbursement under this provision, shall submit its request for reimbursement to Company no later than September 1st of the year in which the adjustment is made and Company shall reimburse regulatory authorities in accordance with this provision on or before September 15th, of the year the adjustment is made.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-10-00242-CV

The Railroad Commission of Texas, CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas, Appellants

v.

Texas Coast Utilities Coalition and State of Texas Agency Consumers, Appellees

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 353RD JUDICIAL DISTRICT NO. D-1-GN-09-000982, HONORABLE STEPHEN YELENOSKY, JUDGE PRESIDING

OPINION

The pivotal issue in this administrative appeal is whether the Legislature's statutory delegation of authority to the Railroad Commission to regulate the "rates" of gas utilities empowers the agency to approve or impose a rate schedule that includes a mechanism for annually adjusting customer charges based on the utility's actual operating expenses, return on investment, and franchise tax payments—adjustments that would be made without the need or requirement to initiate a subsequent rate proceeding before either the Commission or any municipalities having original jurisdiction over the rates. In the view that it possesses such power, the Railroad Commission approved a new rate schedule for appellant CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas (CenterPoint), that contained the adjustment mechanism. Disagreeing with the Commission's view of its authority, the

district court reversed the Commission's order approving CenterPoint's rate schedule. CenterPoint and the Railroad Commission appeal. We will reverse the district court's judgment.

BACKGROUND

CenterPoint is a "gas utility" within the meaning of the Gas Utility Regulatory Act (GURA). *See* Tex. Util. Code Ann. § 101.003(7) (West Supp. 2010); *see generally id.* §§ 101.001-105.051 (West 2007 & Supp. 2010). Under GURA, the Railroad Commission and individual municipalities share jurisdiction to regulate gas utilities, including "establish[ing] and regulat[ing] rates of a gas utility" and adopting rules for determining "the classification of customers and services" and "the applicability of rates." *Id.* § 104.001(b). Municipal governing bodies are vested in the first instance with "exclusive original jurisdiction over the rates, operations, and services of a gas utility within the municipality, subject to the limitations imposed by [GURA]," though they may opt to cede this jurisdiction to the Railroad Commission. *Id.* §§ 102.001(a)(1)(B), 103.001, .003. In areas outside of municipal boundaries—termed the "environs"—the Railroad Commission has exclusive original jurisdiction over a gas utility's "rates and services." *See id.* § 102.001(a)(1)(A); *see also CenterPoint Energy Entex v. Railroad Comm'n*, 213 S.W.3d 364, 367 (Tex. App.—Austin 2006, no pet.) (describing environs). GURA contemplates that the relevant "regulatory authority" exercising jurisdiction will conduct proceedings to establish gas-utility rates through application of cost-of-service ratemaking standards and principles. *See* Tex. Util. Code Ann. §§ 103.021, 104.051-.058; *see also Railroad Comm'n v. Entex, Inc.*, 599 S.W.2d 292, 294 (Tex. 1980) (summarizing these principles). Orders or ordinances of a municipality exercising its exclusive, original jurisdiction under GURA may be appealed to the

Railroad Commission, *see id.* §§ 102.001(b), 103.051, and an appeal from "a rate proceeding before a municipality's governing body" is reviewed de novo and "based on the test year presented to the municipality adjusted for known changes and conditions that are measured with reasonable accuracy." *Id.* §§ 103.051, .055.

The areas that CenterPoint serves in Texas include its "Texas Coast Division," which encompasses a region sweeping generally from Montgomery County, northwest of Houston, around Houston's west and south boundaries to Galveston and Freeport. Desiring to increase its rates throughout the Division—the first such increase in more than thirty years—CenterPoint, as GURA requires, filed notices of intent to increase its rates with the governing bodies of each of the forty-seven municipalities whose boundaries lie within the Division and, with respect to the environs, with the Railroad Commission. *See id.* § 104.102. Thirty-eight of the forty-seven municipalities approved some version of CenterPoint's request. The nine remaining municipalities, which comprise appellee Texas Coast Utilities Coalition (TCUC), denied CenterPoint's request.[1] CenterPoint appealed each of these municipal decisions to the Railroad Commission, *see id.* §§ 102.001(b), 103.051, which consolidated those appeals with the pending environs proceeding. *See* 16 Tex. Admin. Code § 1.125 (Railroad Comm'n, Consolidation & Joint Hearings) (providing that Commission may consolidate proceedings that involve common questions of law or fact). A group of Texas state agencies and higher-education institutions that are customers of CenterPoint, appellee State of Texas Agency Consumers (the State Agencies), intervened.

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[1] The nine TCUC cities are Angleton, Baytown, Clute, Freeport, League City, Pearland, Shoreacres, West Columbia, and Wharton.

Following a three-day contested-case hearing that the Commission conducted itself, the Commission rendered a final order establishing a new rate schedule for CenterPoint applicable within both the Texas Coast Division environs and the TCUC municipalities. The record reflects that the proceedings addressed the elements of cost-of-service ratemaking, including determining the amount of CenterPoint's reasonable and necessary operating expenses and its rate base, ascertaining a reasonable rate of return, and allocating payment of the required revenues among three customer classes—"Residential," "General Service-Small," and "General Service-Large Volume." The Commission rejected several of CenterPoint's proposed calculations relating to its expenses and revenues and ultimately granted the utility an increase in revenues of approximately $1.2 million out of $2.9 million it had requested.

The rate schedule approved by the Railroad Commission prescribed a "monthly rate" for each of the three classes of CenterPoint customers. The monthly rate was to be the sum of three component figures or calculations. The first component was a "base rate" consisting of a flat "customer charge" plus fixed volumetric charges for each hundred cubic feet of gas consumed. These fixed charges, at least at the time the rate schedule was initially to take effect, were derived from historical test-year data, in the manner customary for cost-of-service ratemaking. The next two components of the monthly rate, unlike the fixed charges that comprised the base rate, were variable charges that provided for ongoing adjustments to reflect changes in certain of CenterPoint's actual costs. The first of these variable components, a "tax adjustment," served to pass through to the customer the actual amounts of any municipal franchise fees imposed on CenterPoint in a given month and the customer's proportionate share of any revenue-based taxes (i.e., excluding ad valorem

and income-based taxes) actually levied upon CenterPoint. The second variable component of the monthly rate was a "gas cost adjustment" that similarly functioned to pass through the utility's actual purchased-gas costs to customers. The amount of the gas-cost adjustment was to be calculated through application of a formula in a "Purchased Gas Adjustment" (PGA) tariff.

CenterPoint's PGA tariff or clause was materially similar to the PGA clause we explored at length in another case involving the utility, *CenterPoint Energy Entex v. Railroad Commission*, 208 S.W.3d 608, 616-17 (Tex. App.—Austin 2006, pet. dism'd). As we observed there, PGA clauses have long been widely utilized in gas-utility regulation nationwide, and their use and approval in Texas predates GURA's enactment. *See id.* at 613 (citing *San Antonio Indep. Sch. Dist. v. City of San Antonio*, 550 S.W.2d 262, 266-67 & n. 2 (Tex. 1976); *Railroad Comm'n v. High Plains Natural Gas Co.*, 613 S.W.2d 46, 48 (Tex. Civ. App.—Austin 1981, writ ref'd n.r.e.) (citing *City of Chicago v. Illinois Commerce Comm'n*, 13 Ill.2d 607, 150 N.E.2d 776 (1958)); *Railroad Comm'n v. City of Fort Worth*, 576 S.W.2d 899, 902 (Tex. Civ. App.—Austin 1979, writ ref'd n.r.e.)). These mechanisms "operate[] to increase or decrease the revenue of the gas company by exactly the amount of its increased or decreased costs of gas charged the gas company by its suppliers," thereby passing on the utility's actual gas costs to customers on a dollar-for-dollar basis. *Id.* at 612.

One well-recognized implication of this type of rate structure is that—with the exception of fluctuations in purchased-gas costs and the costs passed through the tax adjustment—CenterPoint (or, alternatively, its customers) would bear the risk, all other things being equal, that the utility's actual revenues, expenses, etc., would prove to depart significantly

from the historically-based projections from which the rates were derived, resulting in the utility "over-" or "under-recovering" relative to its actual costs and prescribed reasonable rate of return, unless and until the rates could be changed prospectively through another round of rate proceedings. *See, e.g., Railroad Comm'n v. Lone Star Gas Co.*, 656 S.W.2d 421, 423 (Tex. 1983) (describing "regulatory lag" and its effects on utilities); *CenterPoint Energy Entex*, 208 S.W.3d at 617 (contrasting "bifurcated regulatory treatment" of fuel costs, which are addressed through PGA clauses due to their volatility, and "most [other] costs," which tend to increase gradually and predictably such that it is "deemed satisfactory" to address them through "fixed components of the rate schedule" derived from "historically based projections of future costs"). With the express goal of reducing such risks and the need or impetus for "full-blown" rate proceedings in the event such risks came to fruition, the Railroad Commission approved, as part of CenterPoint's rate schedule, a version of a "cost-of-service-adjustment" (COSA) rate schedule or clause that CenterPoint had requested. The COSA clause was made effective for an initial term of three years, subject to automatic three-year extensions unless CenterPoint or the regulatory authority having original jurisdiction gave written notice to the contrary.

Simply described, the COSA clause provided a mechanism whereby CenterPoint's monthly rates could be adjusted annually to reflect changes in the utility's actual cost of service and rate base relative to the historically-based data from which the fixed components of those rates had originally been derived. More specifically, the clause prescribed that a "rate adjustment" was to be made, effective each August 1, in an amount derived from the following economic data:

- CenterPoint's actual operating expenses for the preceding calendar year. Included in these expenses were to be depreciation and amortization expenses, taxes other than federal income taxes or those addressed through the tax adjustment, operation and maintenance expenses, "customer-related" expenses, administrative and general expenses, and interest on customer deposits. As with the original rate calculation, the amount did not include purchased-gas costs, which were instead addressed through the PGA clause.

- CenterPoint's actual return on investment for the preceding year, calculated by multiplying the pre-tax rate of return that the Commission had set in the rate proceeding times the utility's "rate base balance" for the preceding year. In CenterPoint's rate case before the Commission, the parties had stipulated to underlying data that yielded an 11.8% reasonable rate of return. The "rate base balance" was to include new utility plant in service, inventories, prepayments, and cash working capital, less customer advances, customer deposits, and deferred income taxes.

- CenterPoint's actual Texas franchise tax payment for the preceding year.

- CenterPoint's actual "non-gas revenue and other revenue (i.e., transportation revenue and service charges)" for the preceding year.

The "rate adjustment" was to be calculated by adding the first three figures (operating expenses, return on investment, and franchise tax payment), subtracting the "non-gas revenue and other revenue" figure, and adjusting the remainder for franchise taxes:

$$\frac{\text{(operating expenses + return on investment + franchise tax) - (actual non-gas and other revenues)}}{\text{(1 - Texas franchise tax statutory rate)}}$$

The result of this calculation—which could be either positive (i.e., a price increase) or negative (i.e., a price decrease)—was then to be "allocated among the customer classes in the same manner as the cost of service was allocated among classes of customers in [CenterPoint's] latest effective rates in the Texas Coast Division." These allocated amounts would then be converted to a per-customer adjustment by dividing each customer class's allocated amount by its average number of customers. The resulting per-customer adjustment would then be divided by twelve to yield a "monthly

adjustment amount, either an increase or decrease, which will be included in the Residential Service, General Service-Small, and General Service-Large Volume customer charges." Any adjustments were capped at five percent of the customer charge effective at the end of the preceding calendar year.

The COSA clause also prescribed procedures through which CenterPoint was to give notice of impending adjustments, disclose its underlying data, and afford regulatory authorities the opportunity to scrutinize and oppose proposed adjustments. CenterPoint was required to file, by May 1 of each year, a sworn statement reporting the above-specified data for the preceding calendar year. Within 45 days of filing the required information, CenterPoint was required to publish notice to its customers similar in form to a notice to increase rates under GURA, including a description of the proposed revisions to rates and their effects on customer charges. Also, following CenterPoint's filings, each regulatory authority with original jurisdiction was to have 90 days to review the proposed rate adjustments. During this period, the authority had the right to obtain "additional information and supporting documents" from CenterPoint within ten working days of its request. After reviewing the proposed adjustment, the regulatory authority could also negotiate changes to the adjustment with CenterPoint or deny it outright. If not denied within the 90-day period, the adjustment would take effect. If a municipality denied an adjustment, the COSA clause authorized CenterPoint to appeal the decision to the Railroad Commission. During the pendency of such an appeal, CenterPoint could proceed to implement the adjusted rates as determined under the COSA clause, subject to refund if the municipality ultimately prevailed.

Finally, the COSA clause emphasized that it "does not limit the legal rights and duties of the regulatory authority" and that "[n]othing herein shall abrogate the jurisdiction of the regulatory authority with respect to whether rates charged are just and reasonable." In other words, if CenterPoint obtained, though the COSA clause, upward adjustments yielding what a regulatory authority regarded as unjust or unreasonable rates, the clause did not prevent the authority from initiating a conventional rate case, as before, to seek reductions in CenterPoint's customer charges. On the other hand, the COSA clause did alter the status quo to the extent that it enabled CenterPoint to obtain the upward adjustments without having to initiate the conventional rate case that otherwise would have been required.

TCUC and the State Agencies sought judicial review of the Railroad Commission's order. *See* Tex. Util. Code Ann. § 105.001; *see also* Tex. Gov't Code Ann. § 2001.171 (West 2008). Collectively, they brought several issues complaining that various of the Commission's findings were inadequate or not supported by substantial evidence. They also asserted that the Commission had exceeded its statutory authority in approving the COSA clause. The district court agreed in part, holding that certain Commission findings relating to expenses paid to affiliated companies were inadequate and that the agency had exceeded its authority in adopting the COSA clause. Regarding the latter, the district court specifically concluded that the "Commission did not have statutory authority to impose [the COSA] on the [TCUC] cities with original jurisdiction . . . [or] . . . to adopt the COSA in [the environs]." Having found error in the Commission's order, the court remanded the matter for further proceedings. *See* Tex. Gov't Code Ann. § 2001.174(2) (West 2008).

CenterPoint and the Railroad Commission both appealed the district court's judgment. *See id.* § 2001.901(a) (West 2008).

ANALYSIS

CenterPoint and the Railroad Commission each bring a single issue asserting that the district court erred in concluding that the Commission lacked authority to adopt or impose the COSA clause within either the environs or the TCUC municipalities. *See id.* § 2001.174(2)(B) (providing that district court may reverse or remand agency's decision if agency exceeds its authority). They do not challenge the district court's judgment of reversal on the alternative ground relating to the Commission's findings regarding payments to affiliates. Consequently, appellants ask that we reverse the district court's judgment concerning the Commission's authority and remand for further proceedings.

As with any dispute concerning the breadth of an administrative agency's authority, we begin our analysis by recognizing that agencies are entirely creatures of statute with no inherent authority of their own. *See CenterPoint Energy Entex*, 208 S.W.3d at 615 (citing *Texas Natural Res. Conservation Comm'n v. Lakeshore Util. Co., Inc.*, 164 S.W.3d 368, 377 (Tex. 2005)). Instead, an agency's authority is limited to (1) powers expressly conferred by the Legislature, and (2) powers that are "reasonably necessary" to effectuate the Legislature's expressly conferred powers, so as to be considered implicit in the Legislature's express grant. *See Texas Mun. Power Agency v. Public Util. Comm'n*, 253 S.W.3d 184, 192-93 (Tex. 2007) (quoting *Public Util. Comm'n v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 315 (Tex. 2001)). This is so regardless of whether a particular agency action might be deemed salutary as a matter of policy or administration, as

an agency "'may not exercise what is effectively a new power' in addition to powers expressly conferred by statute or necessary to accomplish its express duties 'on the theory that such exercise is expedient for administrative purposes.'" *State v. Public Util. Comm'n*, 344 S.W.3d 349, 356 (Tex. 2011) (quoting *City of Austin v. Southwestern Bell Tel. Co.*, 92 S.W.3d 434, 441 (Tex. 2002)). Nor may an agency "contravene specific statutory language, run counter to the general objectives of the statute, or impose additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions." *CenterPoint Energy Entex*, 208 S.W.3d at 615-16 (citing *City of Austin*, 92 S.W.3d at 441; *State v. Public Util. Comm'n*, 131 S.W.3d 314, 321 (Tex. App.—Austin 2004, pet. denied)).

Resolution of the present dispute thus turns on statutory construction, which presents a question of law that we review de novo. *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). In construing a statute, our primary objective is to give effect to the Legislature's intent. *Id.* We seek that intent "first and foremost" in the statutory text. *Lexington Ins. Co. v. Strayhorn*, 209 S.W.3d 83, 85 (Tex. 2006). "Where text is clear, text is determinative of that intent." *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009) (op. on reh'g) (citing *Shumake*, 199 S.W.3d at 284; *Alex Sheshunoff Mgmt. Servs. L.P. v. Johnson*, 209 S.W.3d 644, 651-52 (Tex. 2006)). We consider the words in context, not in isolation. *State v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002). We rely on the plain meaning of the text, unless a different meaning is supplied by legislative definition or is apparent from context, or unless such a construction leads to absurd results. *See City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-26 (Tex. 2008) (citing *Texas Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex. 2004)); *see also* Tex. Gov't Code Ann.

§ 311.011 (West 2005) ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage," but "[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly."). We also presume that the Legislature was aware of the background law and acted with reference to it. *See Acker v. Texas Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990). We further presume that the Legislature selected statutory words, phrases, and expressions deliberately and purposefully. *See Texas Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010); *Shook v. Walden*, 304 S.W.3d 910, 917 (Tex. App.—Austin 2010, no pet.). Only when the statutory text is ambiguous—i.e., susceptible to more than one reasonable interpretation—"do we 'resort to rules of construction or extrinsic aids.'" *Entergy Gulf States, Inc.*, 282 S.W.3d at 437 (quoting *In re Estate of Nash*, 220 S.W.3d 914, 917 (Tex. 2007)). Similarly, if the statute is ambiguous, we give deference to a reasonable construction by an agency charged with the statute's administration. *See Railroad Comm'n v. Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 624-25 (Tex. 2011).

Both appellants urge that the Legislature explicitly delegated extraordinarily broad power to the Railroad Commission to regulate gas-utility rates. They seek textual support, first, in the Legislature's declarations and descriptions of GURA's overarching purposes. GURA as a whole is founded on the Legislature's findings that "gas utilities are by definition monopolies in the areas they serve" such that "the normal forces of competition that regulate prices in a free enterprise society do not operate." *See* Tex. Util. Code Ann. § 101.002(b). To substitute for market competition, the Legislature enacted GURA with the express goal of providing "a

comprehensive and adequate regulatory system for gas utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities." *Id.* § 101.002(a), (b). The Legislature has further instructed that, to this end, GURA is to be "construed liberally to promote the effectiveness and efficiency of regulation of gas utilities to the extent that this construction preserves the validity of [GURA] and its provisions." *Id.* § 101.007. Appellants view these provisions as directives to the Commission to exercise broad and "comprehensive" powers that should be "liberally construed" to the end of "promot[ing] . . . effective[] and efficien[t] regulation of gas utilities." *Id.* §§ 101.002, -.007. And the COSA clause, appellants insist, embodies such "efficient" and "effective" regulation, enabling CenterPoint's rates to "self-correct" without the cost and regulatory lag of a conventional rate case.

Appellants additionally point to a more direct delegation of power to the Railroad Commission that appears within chapter 104 of GURA. Chapter 104 is titled "Rates and Services." Within a section titled "Authorization to Establish and Regulate Rates"—the first in the chapter—the Legislature provided the following: "The [R]ailroad [C]ommission is vested with all the authority and power of this state to ensure compliance with the obligations of gas utilities in [GURA]." *Id.* § 104.001(a). Appellants view this delegation as granting the Commission not only sweeping power in regard to the regulation of gas utility rates, but also great flexibility in regard to the regulatory tools it utilizes.

These broad delegated powers, appellants conclude, would encompass authority to approve the COSA clause. And this would be so, appellants add, in both the environs and within municipalities exercising exclusive original jurisdiction. Although recognizing that municipalities

have exclusive, original jurisdiction to regulate rates within their boundaries in the first instance, appellants insist that the Railroad Commission effectively has full control over the rates there via its exclusive appellate jurisdiction and de novo standard of review. *See id.* §§ 102.001(b), 103.055.

Appellants seek additional textual support for their position in GURA's definition of "rate":

> (A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a gas utility for a service, product, or commodity described in the definition of gas utility in this section; and
>
> (B) a rule, regulation, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

Id. § 101.003(12). As appellants observe, this definition encompasses not only specific charges imposed on a gas utility's customers, but also a "rule," "regulation," or "practice" "affecting" those charges. And it is for this very reason, as appellants further emphasize, that we recently held that a rate schedule containing a variable or formula for determining the amount of a customer charge—specifically, a PGA clause—was a "rate" within GURA's definition. *See CenterPoint Energy Entex*, 208 S.W.3d at 619.

The principal issues in *CenterPoint Energy Entex* were whether the Railroad Commission had statutory authority to conduct a retroactive prudence review of charges that CenterPoint had flowed through a PGA clause and, if so, whether such a proceeding was a "ratemaking" proceeding for which a municipality could seek expense reimbursement. *Id.* at 612; *see* Tex. Util. Code Ann. § 103.022(b). We answered the former question in the affirmative and the

latter question in the negative. Integral to our analysis of both questions, and to our disposition of related complaints by CenterPoint that the retroactive prudence review violated the filed-rate doctrine and amounted to impermissible retroactive ratemaking, was our conclusion that the prudence review was not in itself "ratemaking" but permissible Commission action to ensure that CenterPoint had charged its customers in a manner consistent with its preexisting approved "rates"—"rates" that incorporated the PGA clause as one of their components. *See CenterPoint Energy Entex*, 208 S.W.3d at 616-26.

While we acknowledged that GURA does not explicitly mention PGA clauses, *see id.* at 613, we concluded that the act's broad definition of "rate" nonetheless encompassed and contemplated this sort of adjustment mechanism. *See id.* at 618 (quoting Tex. Util. Code Ann. § 101.003(12)). Focusing on the second prong of the definition (the portion referencing a "rule," "regulation," or "practice" "affecting" customer charges), we discerned that "[t]hrough this language, the [L]egislature has recognized that a rate may consist not merely of a fixed dollar amount but may instead be a rule 'affecting' the charge, a term contemplating the use of variables." *Id.* Consequently, we reasoned, CenterPoint's approved rate schedules, which prescribed "a three-step process for computing a customer's monthly gas charge"—(1) a fixed minimum monthly charge plus (2) a fixed volumetric charge (3) adjusted under the PGA clause for deviations between actual purchased-gas prices and a set gas purchase price—constituted a "rule" affecting the charge that "fits squarely within the statutory definition of 'rate.'" *Id.* at 618-19. In further support of our holding, we approved of the reasoning in federal precedent recognizing that the Federal Energy Regulatory Commission could approve "a tariff containing a rate 'formula' or a rate 'rule' instead

of a specific number" under the Federal Natural Gas Act, *id.* at 619 (quoting *ChevronTexaco Exploration & Prod. Co. v. Federal Energy Regulatory Comm'n*, 387 F.3d 892, 895 (D.C. Cir. 2004) (quoting *Transwestern Pipeline Co. v. Federal Energy Regulatory Comm'n*, 897 F.2d 570, 578 (D.C. Cir. 1990)), and the proposition, reflected in a secondary authority, that "rates generally may consist of [both] fixed values and variable components." *Id.* (citing Richard J. Pierce, *Reconsidering the Roles of Regulation and Competition in the Natural Gas Industry*, 97 Harv. L. Rev. 345, 349 n.29 (1983)).

As previously noted, CenterPoint's approved rate schedule in this proceeding contains a similar PGA clause, as well as a tax-adjustment mechanism, and no party questions the Railroad Commission's authority to order either provision. Appellants insist that the COSA clause operates in materially the same manner—it amounts to a set of variables or formulae for calculating ongoing adjustments to customer charges in light of current economic data. Thus, they conclude, CenterPoint's rate schedule as a whole, including the COSA clause, was a "rate" that was well within the Railroad Commission's authority to adopt or impose. *See id.* at 618-19.

In response, appellees dispute that the Legislature's statement of GURA's general policy goals or its directive that the statute be "liberally construed" are the sweeping delegations of authority that appellants portray. They emphasize the principles that agencies possess only the powers granted them by express statutory grant or that are reasonably necessary to effectuate an express grant. *See Texas Mun. Power Agency*, 253 S.W.3d at 192-93. We agree with appellees on this point. Given the basic limitations on agency authority that appellees cite, the Legislature's general statements that it intended GURA to be a "comprehensive" and "adequate" regulatory

scheme that should be "construed liberally" in themselves merely beg the question as to what specific powers have been delegated to Railroad Commission in that scheme. *See* Tex. Util. Code Ann. §§ 101.002, .007. We must, in short, look to other provisions of GURA to ascertain whether the Legislature has granted the Railroad Commission the broad authority appellants claim.

We agree with appellants that GURA section 104.001—"The [R]ailroad [C]ommission is vested with all the authority and power of this state to ensure compliance with the obligations of gas utilities in [GURA]"—represents an extraordinarily broad delegation of authority to the Commission in regard to rate regulation. *See id.* § 104.001(a). "All of the authority and power of this state" is synonymous with the full breadth of Texas's "police power," its discretionary power to regulate conduct (subject to constitutional limitations) to protect or advance "the health, welfare, morals, and safety of its citizens." *See Black's Law Dictionary* 1541 (9th ed. 2009) (defining "state police power").

"The obligations of gas utilities" in GURA—i.e., what the Railroad Commission is given "[a]ll of the authority and power of this state" to ensure that utilities comply with—include not charging, collecting, or receiving "a rate for utility service" or imposing a "rule or regulation" except as GURA provides. Tex. Util. Code Ann. § 104.002. GURA prohibits a gas utility from "grant[ing] an unreasonable preference or advantage concerning rates or services to a person in a classification," "subject[ing] a person in a classification to an unreasonable prejudice or disadvantage concerning rates or services," "establish[ing] or maintain[ing] an unreasonable difference concerning rates or services between localities or between classes of service," or "directly or indirectly charg[ing], demand[ing], collect[ing], or receiv[ing] from a person a greater or lesser compensation

for a service provided or to be provided" than the compensation provided in schedules of "rates" it must file with each regulatory authority having original or appellate jurisdiction over the areas served. *Id.* §§ 104.004, .005(a); *see id.* § 102.151. The applicable "regulatory authority," in turn, is charged with ensuring that "each rate a gas utility [shall] . . . make, demand, or receive is just and reasonable," not "unreasonably preferential, prejudicial, or discriminatory but . . . sufficient, equitable, and consistent in application to each class of consumer." *Id.* § 104.003(a). GURA further contemplates that regulatory authorities will conduct "proceeding[s] involving a proposed rate change" in which the gas utility has the burden of proving that any "rate change" it proposes is just and reasonable and, alternatively, the burden of proving that the "existing rate is just and reasonable, if the proposal is to reduce the rate." *Id.* § 104.008.

A delegation of "[a]ll of the authority and power of this state" to ensure that utilities comply with the foregoing requirements would, all other things being equal, entail both expansive enforcement power and discretion in regard to the means through which the Railroad Commission pursues those ends. And it would seem to us that this discretion would provide sufficient flexibility to enable the Commission to effectuate the ultimate goal of "just and reasonable" rates through the use of variable or formula rates and not merely fixed charges. Indeed, as appellants emphasize, the Legislature appears to have explicitly contemplated as much in GURA's definition of "rate."

In response to appellants' arguments regarding GURA's "rate" definition and our analysis of it in *CenterPoint Energy Entex*, appellees emphasize at length what they perceive to be key differences between PGA clauses and the COSA clause. Among other distinctions, appellees point out that PGA clauses have a long history of use and approval in Texas, whereas the

COSA clause, as they see it, is a comparatively novel and untested regulatory improvisation. They likewise contrast the nature of costs that are flowed through a PGA clause versus the COSA clause. The historical use and approval of PGA clauses, as appellees accurately observe, was driven by regulatory recognition that fuel costs "are particularly subject to dramatic and unforeseen changes," are driven by market forces beyond a utility's control, and "constitute such a large proportion of a utility's total costs that any substantial regulatory lag in approving rate increases to reflect fuel cost increases can cause rapid financial ruin." *CenterPoint Energy Entex*, 208 S.W.3d at 617. The types of costs and revenues made the basis for adjustments under the COSA clause, by contrast, tend to be less volatile, be somewhat easier to predict or control, and thus have often been addressed in fixed components of a rate schedule. *See id.*

To the extent that appellees are asserting that the GURA's "rate" definition contemplates only PGA clauses and not other types of variable or formula rates, the statutory text belies that contention. The definition contains no such limitation, but refers broadly to "*a* rule . . . affecting the compensation, tariff, charge, fare, toll, rental, or classification" imposed on customers. *See* Tex. Util. Code Ann. § 101.003(12)(B) (emphasis added). And, applying the literal language of this provision, the COSA clause would, all other things being equal, come within GURA's definition of "rate," as it is "a rule, regulation, [or] practice . . . affecting the compensation, tariff, charge, [or] fare" imposed by CenterPoint. *See id.*; *CenterPoint Energy Entex*, 208 S.W.3d at 618-19.[2]

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[2] We acknowledge that some of the language in the COSA clause itself is inconsistent with the notion that the clause is part of a "rate" as opposed to a means of adjusting a "rate." For example, the COSA clause purports to prescribe "rate adjustments" and "rate" "increases" or

The State Agencies, in fact, ultimately concede that GURA's "broad statutory definition of 'rate'" gives the Railroad Commission jurisdiction over "formula rates" that would not necessarily be limited to PGAs. However, "that GURA under some circumstances permits formula rates" does not, they insist, mean that the statute empowers the Commission "to approve any and everything that a party may wish to describe as a 'formula rate.'" And whether a particular formula rate is within the Railroad Commission's authority to adopt, the State Agencies urge, "can only be answered by reference to the substantive and procedural rate-setting provisions of GURA." The State Agencies, as well as the TCUC municipalities, ultimately rely on the assertion that the COSA clause conflicts with those GURA provisions. The existence of those conflicts, appellees reason, belies any authority on the part of the Commission to impose the clause.

Appellees rely in part on subchapter B of chapter 104, which governs the "Computation of Rates" in rate proceedings:

> • "In establishing a gas utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses." Tex. Util. Code Ann. § 104.051.

"decreases" to the "monthly rates" that are determined elsewhere in the rate schedule. Similarly, we note that the adjustments yielded by the rate schedule's other variable mechanisms (the PGA clause and the tax adjustment and franchise fee tariffs) are, in contrast to the COSA adjustments, characterized within the schedule as components of the "monthly rate" itself. We conclude that this nomenclature is not material to our analysis. It is the Legislature's intent reflected in GURA's text that controls whether the COSA clause is part of a valid "rate" and was within the Railroad Commission's authority to adopt or impose. Applying that definition, as suggested above, the COSA clause comes within GURA's definition of "rate."

- "The regulatory authority may not establish a rate that yields more than a fair return on the adjusted value of the invested capital used and useful in providing service to the public." *Id.* § 104.052.

- "Gas utility rates shall be based on the adjusted value of invested capital used and useful to the utility in providing service and that adjusted value shall be computed on the basis of a reasonable balance between" (1) original cost (i.e., actual money or other consideration paid), less depreciation, and (2) current cost, less depreciation. *Id.* § 104.053(a); *see also id.* § 104.054 (requiring Railroad Commission to establish uniform rates and methods of depreciation). The regulatory authority is permitted to "consider inflation, deflation, quality of service being provided, growth rate of the service area, and need for the gas utility to attract new capital." *Id.* § 104.053(c). "Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority." *Id.* § 104.053(e).

- "Net income shall be used to establish just and reasonable rates." *Id.* § 104.055(a). "Net income" for these purposes "means the total revenues of the gas utility from gas utility service less all reasonable and necessary expenses related to that gas utility service," as determined by the regulatory authority "in a manner consistent with this subchapter." *Id.* The subchapter addresses the treatment of several components of this calculation, including certain payments to affiliates, taxes and tax benefits, lobbying expenses, and civic and charitable contributions. *See id.* §§ 104.055(b)-(e), .056-.058.

As all parties acknowledge, these standards incorporate cost-of-service ratemaking principles and methods. *See id.* § 104.111 (referring to "the cost of service standard prescribed by Section 104.051"); *see also id.* § 103.055(a) (referencing use of historical test year in this analysis); *Entex, Inc.*, 599 S.W.2d at 294 (discussing cost-of-service ratemaking principles).

In addition to these requirements, subchapter C of chapter 104 prescribes several procedures that must be complied with when gas utilities seek to increase their "rates." A gas utility desiring to increase its "rates" must file a statement of such intent with the regulatory authority

having original jurisdiction over those rates at least thirty-five days before the effective date of the proposed increase. *See id.* § 104.102(a), (b). The statement of intent must include proposed revisions of tariffs and schedules and "a detailed statement" of each proposed increase, the effect the proposed increase is expected to have on the utility's revenues, and each class and number of utility consumers affected. *Id.* § 104.102(c). The utility must also "publish, in conspicuous form, notice to the public of the proposed increase once each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed increase." *Id.* § 104.103(a)(1).

In response to the statement of intent, the regulatory authority may hold a hearing to determine "the propriety of the increase" and must do so if the proposed increase would constitute a "major" change—"an increase in rates that would increase the [utility's] aggregate revenues . . . more than the greater of $100,000 or 2½ percent." *Id.* §§ 104.101, .105. Pending a final determination, a local regulatory authority may suspend the operation of the new schedule for up to 90 days after it would otherwise have become effective, and the Railroad Commission may do the same for up to 150 days. *See id.* § 104.107(a). During this period, the regulatory authority may implement temporary rates; otherwise, the preexisting rates continue in effect. *See id.* § 104.108. Additional provision is made for gas utilities to put rates into effect under bond pending final determination. *See id.* § 104.109. "If, after hearing, the regulatory authority finds the rates are unreasonable or in violation of law, the regulatory authority shall . . . enter an order establishing the rates the gas utility shall charge or apply for the service in question," which "shall be observed thereafter until changed as provided by [GURA]." *Id.* § 104.110.

Finally, also of relevance is section 104.301 of GURA, commonly known as the "GRIP" (Gas Reliability Infrastructure Program) statute. *See id.* § 104.301. The GRIP statute provides that under certain circumstances a gas utility may file with the regulatory authority, outside of a traditional rate-making proceeding, a tariff or rate schedule providing for "an interim adjustment in the utility's customer charge or initial block rate" to reflect changes in invested capital. *See id.* Contrasting the GRIP statute with the more general ratemaking provisions in subchapters B and C of chapter 104, appellees urge that the twain reflect legislative intent that adjustments to other types of rate elements may be made solely through a traditional rate proceeding. In fact, as appellees emphasize, several Railroad Commission precedents applying the GRIP statute have recognized that:

> Until promulgation of [the GRIP statute] . . . , a utility could not increase its rates applicable to customers located within a municipality without filing with the regulatory authority a formal statement of intent rate case, including a comprehensive cost of service rate review.

See, e.g., Tex. R.R. Comm'n, *Appeal Filed by ATMOS Energy Corp., Mid-Tex Div. for Review of Mun. Rate Actions Regarding the Annual GRIP from the Cities of Caldwell, et al.*, Docket No. 9585, Gas Util. Info. Bull. No. 781, 7 (Gas Servs. Div. Oct. 10, 2005) (final order).

By purporting to permit "piecemeal rate adjustments" based on changes to "isolated rate elements," appellees urge, the COSA clause authorized by the Railroad Commission flatly conflicts with chapter 104, subchapter B's requirements of a more comprehensive cost-of-service ratemaking analysis. *See* Tex. Util. Code Ann. §§ 104.051 (requiring the regulatory authority to "establish the utility's overall revenues . . ."), .053 (prescribing method for calculating adjusted value of invested capital), .055 (prescribing calculation of net income). They likewise complain that the

COSA clause purports to allow CenterPoint to obtain rate increases without complying with the procedures specified in chapter 104, subchapter C. With this, appellees emphasize the principle that where the Legislature has granted a power to an agency and prescribed the manner of its exercise, "the prescribed method excludes all others, and must be followed." *Cobra Oil & Gas Corp. v. Sadler*, 447 S.W.2d 887, 892 (Tex. 1968). In sum, appellees argue that the Railroad Commission exceeded its delegated powers in approving or imposing the COSA clause because it effectively created a sort of alternative rate-regulation or rate-adjustment mechanism that is not expressly authorized anywhere in GURA and is not "reasonably necessary" to effectuate what the Legislature has already deemed a "comprehensive and adequate regulatory system" under that act—but squarely conflicts with that system.

We observe that each of appellees' arguments hinges on the premise that an annual adjustment made pursuant to the COSA clause *changes* the existing "rate" in a manner implicating GURA's substantive and procedural ratemaking requirements. *See* Tex. Util. Code Ann. §§ 104.101-.112 (Subchapter C titled "RATE CHANGES PROPOSED BY UTILITY"), 104.151-.152 (Subchapter D titled "RATE CHANGES PROPOSED BY COMMISSION"), 104.101 ("major change" defined as "an increase in rates . . ."), 104.102(a) ("A gas utility may not increase its rates . . . ."), 104.102(c) (providing that statement of intent must include "proposed revision" and "proposed increase"). Appellants, in reply, insist that COSA adjustments instead reflect the mere application of an *existing* rate to determine a customer charge. *See Southwestern Pub. Serv. Co. v. Public Util. Comm'n*, 962 S.W.2d 207, 220 (Tex. App.—Austin 1998, pet. denied) ("[N]ot all matters that have a potential effect on rates are ratemaking proceedings. Only matters directly

resulting in changed rates constitute ratemaking proceedings."). In other words, the "rate" whose adoption was subject to the requirements of GURA chapter 104, in appellants' view, was the rate schedule as approved by the Commission, not subsequent calculations of customer charges under it. If appellees' view of the relevant "rate" is correct, they would be correct in claiming that conflicts exist between the COSA clause and GURA's ratemaking provisions. But these conflicts are resolved or avoided if we construe "rate" as appellants see it.

The text of GURA lends equal support to both constructions. Its definition of "rate," as previously noted, contains two prongs or elements. The first defines "rate" in terms of customer charges—"any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a gas utility for a service, product, or commodity." Tex. Util. Code Ann. § 101.003(12)(A). The second prong refers more broadly to "rules" through which customer charges are calculated. *See id.* § 101.003(12)(B). The choice between the two prongs ultimately controls our disposition of this appeal.

In support of its order, the Railroad Commission concluded, in part, that its approval of a COSA tariff was within its jurisdiction and did not conflict with the rate-setting provisions of GURA. In concluding that there was no conflict, the Commission necessarily concluded that the second prong of GURA's "rate" definition was the controlling or relevant one. Considering the text of the "rule" definition in conjunction with the Legislature's broad delegation to the Commission of "all the authority and power of this state to ensure compliance with the obligations of gas utilities in [GURA]," we conclude that the Commission's construction was, at a minimum, a reasonable construction of a statutory scheme made ambiguous by the other prong of the "rule" definition.

Consequently, we will defer to that construction, *see Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d at 624-25, and accordingly reject appellees' assertions that the Commission's adoption of the COSA clause as part of CenterPoint's rate schedule was inconsistent with GURA's ratemaking provisions.

Beyond these assertions regarding GURA's ratemaking provisions, the TCUC municipalities urge that the Railroad Commission's construction of its authority conflicts with GURA's provisions conferring exclusive original jurisdiction on municipalities. Specifically, they complain that a "rate" that includes an adjustment mechanism subverts municipalities' exclusive original jurisdiction over "rates" within their boundaries by enabling CenterPoint effectively to implement subsequent changes without filing a rate case with each affected municipality, as GURA contemplates, in their view. But this argument, like the preceding ones, ultimately hinges on GURA's definition of "rate," presuming that each subsequent annual application of the COSA provision results in a "changed" rate by CenterPoint that triggers the requirement of a new rate case. We defer again to the Commission's reasonable construction of its authority in light of GURA's two-pronged "rate" definition. *See id.*; *see also* Tex. Util. Code Ann. § 103.001 (grant of exclusive original jurisdiction to municipal governing bodies is "subject to the limitations imposed by [GURA]").

The TCUC municipalities additionally argue that Railroad Commission rule 7.220(c) prohibits the Commission from using formula rates to determine environs rates because that section does not allow a municipality's cost-of-service adjustment clause to be applicable to an adjacent environs area. *See* 16 Tex. Admin. Code § 7.220(c) (Railroad Comm'n, Environs Rates). We note

initially that subsection (d) of this rule specifies that the rule "shall not apply to major rate changes or to changes in special rates," *see id.* § 7.220(d), and the Railroad Commission found that the rate change here constituted a major change. Regardless, however, the plain language of 7.220(c) and its context indicate that its purpose is not to preclude cost-of-service clauses in the environs. Generally stated, rule 7.220 sets out the guidelines the Railroad Commission uses to set environs rates, including its practice of allowing environs rates to be the same as the rates in effect in the adjacent municipalities. *See id.* § 7.220(a). Subsection (c) specifically addresses environs rate changes made pursuant to a cost-of-service adjustment clause:

> The Commission shall review, on a cost of service basis, an increase in an environs rate that the utility proposes pursuant to a cost of service adjustment clause, as defined in § 7.115(9) of this title (relating to Definitions). The cost of service adjustment clause in effect in the adjacent municipality shall not be applicable or put into effect for the affected environs area, although the utility may request the same rates that are in effect in the adjacent municipality for the environs area. The Commission may review the proposed rate increases pursuant to these clauses on an informal basis and will not schedule a formal hearing unless a complaint is received pursuant to subsection (b)(4) of this section or the Commission elects to conduct a formal hearing.

Id. § 7.220(c). Thus, rather than prohibiting the use of cost-of-service adjustment clauses for environs rates, this section simply provides that such clauses are subject to review by the Railroad Commission and will not be *automatically* applicable as adjacent municipality rates.

TCUC and the State Agencies also argue that a prior Railroad Commission order in a different proceeding establishes that the Railroad Commission has determined that it lacks the statutory authority to adopt adjustable rates for the environs. *See* Texas R.R. Comm'n,

Statement of Intent of TXU Lone Star Pipeline to Establish an Integrity and Safety Assessment for Recovery of Pipeline Integrity Assessment and Management Expenses and Class Location Changes, Docket No. 9304, Gas Utils. Info. Bull. No. 706, 13 (Gas Servs. Div. Aug. 26, 2002) (order of dismissal). TCUC contends that the *TXU* order precludes the Railroad Commission from adopting an adjustment clause outside of GURA statement-of-intent proceedings. Initially, we note that the COSA at issue here was, as discussed above, adopted as part of a GURA statement-of-intent proceeding initiated by CenterPoint. Thus, to the extent that TCUC's argument here relates to its incorrect assumption that each application of the COSA changes the existing "rate," we have already rejected that argument on the ground that the COSA itself is the rate adopted by the Railroad Commission under its statutory authority to adopt natural-gas rates. Regardless, however, the Railroad Commission's order in *TXU Lone Star Pipeline* does not sweep as broadly as TCUC suggests. In *TXU*, the Railroad Commission found that it—

> cannot establish the incremental rate requested by TXU LSP *without establishing the utility's reasonable and necessary operating expenses and appropriate rate of return on its invested capital.* There is no statutory authority granting the Commission the power to set an incremental rate for the sole purpose of allowing additional marginal revenue to the utility designed to recover additional rates of return on capital and additional operating expenses at the margin. The establishment of the incremental rate proposed by TXU LSP is outside the statutory scheme of the Texas Utilities Code.

See id. (emphasis added). Although the Railroad Commission does reject an incremental rate as being outside GURA, it does so in a way that makes it clear that its decision is limited to the

specific rate being proposed. Nothing in the decision suggests that such a rate would be prohibited in all circumstances.

Finally, in a post-submission brief, the TCUC municipalities emphasize that the Legislature failed to enact an amendment to GURA that, as they portray it, was aimed at allowing the Railroad Commission to establish cost-of-service adjustments.[3] But as the Texas Supreme Court has instructed us, we should "attach no controlling significance to the Legislature's failure to enact . . . proposed [legislation]." *See Ojo v. Farmers Group, Inc.*, —S.W.3d—, No. 10–0245, 2011 WL 2112778, at *18 (Tex. May 27, 2011) (quoting *Texas Emp't Comm'n v. Holberg*, 440 S.W.2d 38, 42 (Tex. 1969), and discussing the supreme court's longstanding reluctance to draw inferences from the Legislature's failure to act); *Entergy Gulf States*, 282 S.W.3d at 443 (citing *Holberg*, 440 S.W.2d at 42). Our analysis of the Railroad Commission's authority under GURA, in other words, must rest upon the words the Legislature actually enacted.

We conclude that the Railroad Commission's delegated authority under GURA encompasses the power to adopt or impose the COSA clause in both the Texas Coastal Division environs and the TCUC municipalities. We sustain appellants' sole issue on appeal.

CONCLUSION

Having sustained appellants' sole issue on appeal, we reverse the district court's judgment that the Railroad Commission exceeded its authority in adopting or imposing the

[3] *See* Tex. H.B. 2435, 82d Leg., R.S. (2011); Tex. S.B. 1309, 82d Leg., R.S. (2011).

COSA clause. We remand this cause to the district court for further proceedings not inconsistent with this opinion.

Bob Pemberton, Justice

Before Chief Justice Jones, Justices Puryear and Pemberton

Reversed and Remanded

Filed: October 27, 2011

BEFORE THE
RAILROAD COMMISSION OF TEXAS

APPEAL OF CENTERPOINT ENERGY RESOURCES CORP., d/b/a CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS FROM THE ACTIONS OF THE TCUC CITIES (COSA-3).	§ § § § § § §	**GAS UTILITIES DOCKET Nos. 10007 & 10018**

FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to Tex. Gov't Code Ann. Chap 551, et seq. (Vernon 2004 & Supp. 2010). The Railroad Commission adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint") is a gas utility as that term is defined in the Texas Utility Code.

2. On August 11, 2010, CenterPoint filed this appeal of actions taken by the Cities of Angleton, Baytown, League Citye, Pearland, Shoreacres, West Columbia, and Wharton (collectively "TCUC") denying the company's proposed cost of service adjustment ("COSA – 3") for 2009.

3. The parties have reached a *Settlement Agreement* regarding the issues raised in the appeal.

4. The parties have stipulated to the following documents and they are admitted into the record of the case:

CenterPoint:

- Direct Testimony of Scott Doyle, CenterPoint Ex. 1;
- Direct Testimony of Kelly Gauger, CenterPoint Ex. 2;
- Rebuttal Testimony of Kelly Gauger, CenterPoint Ex. 3;
- Rebuttal Testimony of Dean Woods, CenterPoint Ex. 4;
- Rebuttal Testimony of Jay Joyce, CenterPoint Ex. 5; and
- Rebuttal Testimony of Jason Ryan (redacted), CenterPoint Ex. 6.

TCUC:

- Direct Testimony of Jacob Pous, TCUC Ex. 1;
- Direct Testimony of James Brazell, TCUC Ex. 2;
- Various Workpapers Related to Pous' Direct Testimony, TCUC Ex. 3,
- Direct Testimony of James Brazell, TCUC Ex. 4, and
- Supplemental Testimony of James Brazell, TCUC Ex. 5.

5. The parties have also stipulated to rate case expenses and in support of the rate case expenses the parties filed the following documents admitted into the record of this proceeding:

   - CenterPoint Energy filing made on January 20, 2011, in support of rate case expenses totaling $155,741.04, CenterPoint Ex. 6.
   - GCCC filing made on January 20, 2011, in support of rate case expenses totaling $131,289.80, TCUC Exs. 4 and 5.

6. The COSA – 3 tariff limits recovery of rate-case expenses to $100,000.

7. GUD No. 10006 was a parallel proceeding and involved a similar tariff, COSA – 2. The parties to that proceeding requested approval of $43,075.46.

8. The COSA – 2 adjustment calculated an ultimate system-wide adjustment of $1,996,164.

9. The expenses in that proceeding were about 2% of the calculated increase.

10. The COSA -3 adjustment calculated an ultimate system-wide adjustment of $2,049,142.

11. The expenses in this proceeding, as reflected in the Settlement Agreement, are at least 14% with no limitation in the event the appellate proceeding is not abated, of the calculated increase and are not commensurate with the rate increase requested.

12. The rate-case expense request of the parties in this proceeding is more than six times the rate-case expenses request in GUD No. 10006.

13. The rate-case expense request in this proceeding will impact only a portion of the 244,012 residential and commercial customers within the Texas Coast Division as only seven municipalities intervened in this proceeding as set out in Finding of Fact No. 2.

14. In the prefiled testimony filed in this case, the company requested $155,741.04 in rate-case expenses. The proposed Settlement Agreement included a minimum of the $155,741.04 in actual and estimated rate-case expenses.

15. In the prefiled testimony filed in this case, the company asserted that the reasonable rate-case expenses of TCUC should be limited to $131,289.80. The proposed Settlement Agreement included a minimum of $131,289.80 in actual and estimated rate-case expenses.

16. It is reasonable to conclude that a fully litigated proceeding should result in rate-case expenses that are higher than rate-case expenses included in a settled case.

17. Prefiled testimony provided by the parties in this proceeding on November 23, 2011, asserted that rate-case expenses in the amount of $287,031 were just and reasonable in the event this case was fully litigated. The Settlement Agreement included a minimum of $287,031 in actual and estimated rate-case expenses.

18. The proposed settlement agreement does not terminate litigation in this proceeding.

19. The rate-case expense provisions included in the proposed settlement agreement does not propose an effective cap on rate-case expenses.

20. Based upon the record in this proceeding, the *Settlement Agreement* is not just and reasonable.

CONCLUSIONS OF LAW

1. CenterPoint Enrgy Entex (CenterPoint) is a "Gas Utility" as defined in Tex. Util. Code Ann. §101.003(7) (Vernon 2009) and §121.001(2009) and is therefore subject to the jurisdiction of the Railroad Commission (Commission) of Texas.

2. The Railroad Commission of Texas (Commission) has jurisdiction over CenterPoint and CenterPoint's statement of intent and appeals under Tex. Util. Code Ann. §§ 102.001, 103.022, 103.054, & 103.055, 104.001, 104.001 and 104.201 (Vernon 2007).

3. Under Tex. Util. Code Ann. §102.001 (Vernon 2009), the Commission has exclusive original jurisdiction over the rates and services of a gas utility that distributes natural gas in areas outside of a municipality and over the rates and services of a gas utility that transmits, transports, delivers, or sells natural gas to a gas utility that distributes the gas to the public.

4. This Appeals was processed in accordance with the requirements of the Gas Utility regulatory Act (GURA), and the Administrative Procedure Act, Tex. Gov't Code ANN. §§2001.001-2001.902 (Vernon 2000 and Supp. 2009) (APA).

5. In accordance with the stated purpose of the Texas Utilities Code, Subtitle A, expressed under Tex. Util. Code Ann. §101.002 (Vernon 1998), the Commission has assured that the rates, operations, and services established in this docket are just and reasonable to customers and to the utilities.

6. In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to Texas Utilities Code, §103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Evidence must be provided related to, but not limited to, the amount of work done, the time and labor required to accomplish the work, the nature, extent, and difficulty of the work done, the originality of the work, the charges by others for work of the same or similar nature, and any other factor taken into account in setting the amount of the compensation. 16 Tex. Admin. Code 7.5530(a).

7. In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out previously, and shall also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted. 16 Tex. Admin. Code 7.5530(b).

8. The jurisdiction of the Commission in this case does not extend to municipalities that are not parties to this proceedings, Tex. Util. Code Ann. §§ 102.001 and 103.055.

IT IS THEREFORE ORDERED that the *Settlement Agreement* is not just and reasonable and is **HEREBY** rejected.

This Order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

SIGNED this 8th day of March, 2011.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN ELIZABETH A. JONES

COMMISSIONER MICHAEL L. WILLIAMS

COMMISSIONER DAVID PORTER

ATTEST:

Kathy Way
SECRETARY

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

TO: Chairman Elizabeth A. Jones
Commissioner Michael L. Williams
Commissioner David Porter

FROM: Gene Montes, Hearings Examiner
Hearings Section, Office of General Counsel
Mark Brock, Technical Examiner
Market Oversight Section, Gas Services Division

DATE: March 1, 2011

SUBJECT: *Appeal of Center Point Energy Corp., d/b/a Center Point Energy Entex and Center Point Energy Texas Gas From the Actions of the TCUC Cities (COSA-3).* **GUD No. 10007 and 10018.**

Introduction

On April 30, 2010, CenterPoint filed with the TCUC Cities its COSA – 3 adjustment filing. CenterPoint also filed a COSA – 3 adjustment filing with the Railroad Commission to adjust the rates in the environs of the TCUC municipalities. That case was docketed as GUD No. 9985 and the Commission issued a final order in that case on July 19, 2010. The municipalities denied the request filed with the TCUC municipalities and CenterPoint filed an appeal which was docketed as GUD Nos. 10007 and 10018. The parties have now reached a settlement agreement in these consolidated appellate proceedings that implements the same rates approved by the Commission in GUD No. 9985.

Rate Case Expenses in the Parallel Proceeding

At the last conference, the Commission considered a settlement agreement in GUD No. 10006. That docket involved a similar tariff identified as COSA – 2. The settlement agreement in that case included a provision that would allow the parties to that proceeding to pursue recovery of $43,075.46. The rate case expense request was well below the amount of rate-case expenses contemplated by the COSA – 2 tariff. The COSA – 2 tariff provides as follows:

> To defray the cost, if any, of regulatory authorities conducting a review of Company's annual rate adjustment, Company shall reimburse the regulatory authorities for their reasonable expenses for such review in an aggregate amount not to exceed $100,000.

APPENDIX 4

Accordingly, the Examiners recommended approval of the settlement agreement. The Commission subsequently approved the settlement agreement.

Rate Case Expenses in this Proceeding

In this proceeding, the parties are requesting approval of $287,031 in rate-case expenses. Table 1 sets out the rate-case expense request.

Table 1
Rate Case Expense Request in GUD Nos. 10007 & 10017

Party	Actual	Estimated	Total/Party
CenterPoint	$70,741	$85,000	$155,741
TCUC	$44,117	$87,172	$131,290
Totals	$114,858	$172,172	$287,031

Given the nearly sevenfold increase in fees compared to GUD No. 10006, the Examiners have reservations recommending approval of the proposed settlement.

Options Regarding the Proposed Settlement Agreement

Although the Examiners recommend that the proposed settlement be rejected, the Examiners set out several options for Commission consideration.

- *Adopt the Proposed Settlement Agreement*

The Commission may conclude that the proposed settlement is reasonable and that the attorneys fees requested are reasonable. Such a conclusion would find as its basis the structure of the settlement agreement and the procedural posture of the case. The Commission may conclude that the settlement represents a more complex structure than the settlement in GUD No. 10006 approved at the last conference. Further, the Commission may conclude that the settlement was produced at a slightly different procedural juncture.

As to the complexity, the Commission may find that the complexity of this settlement may have been impacted by the proceedings in GUD No. 9791 and subsequent appeals. In that case, TCUC contended that there is no statutory authority for the COSA – 3 tariff approved in GUD No. 9791. TCUC appealed the Final Order in that case and those appeals are currently pending. The initial rate request that underlies these proceedings was made pursuant to the COSA – 3 tariff approved in GUD No. 9791. As part of this settlement, the proposed rates will go into effect pursuant to the COSA – 3 tariff. Nevertheless, in order to preserve its position in the appellate proceedings surrounding GUD No. 9791, TCUC will appeal the order approving the settlement agreement. This is intended solely to preserve TCUC's challenge to the Commission's authority to approve a rate pursuant to COSA – 3. Once the appeal is filed, the parties have agreed to request that the appellate proceeding be abated until all appeals regarding

GUD No. 9791 have been exhausted. Thus, arguably the Commission may find that the settlement is more complex than the settlement approved in GUD No. 10006.

As to the procedural posture, the Commission may find that the settlement in this proceeding occurred at a later juncture – after prefiled testimony was filed by TCUC. This resulted in higher expenses than those expenses incurred by GCCC in GUD No. 10006. GCCC reached a settlement agreement prior to filing testimony in that case.

Attached, as Exhibit 1, is a draft order that approves the settlement. Attached to the proposed order approving the settlement agreement is the settlement agreement itself. Additionally, attached as Exhibit 2, is a letter filed by TCUC in support of the proposed settlement agreement.

- *Reject the Proposed Settlement Agreement*

Another option is for the Commission to reject the settlement and allow the rates to go into effect by operation of law. This option is the recommendation of the Examiners. The statutory deadline in this proceeding is March 23, 2011. If no action is taken by the March 22, 2011 Conference, the rates will go into effect by operation of law. Those rates are the rates requested by the utility in these appeals. These are the same rates approved by the Commission in GUD No. 9985. This would effectively deny the parties rate case expenses.

The Examiners find that despite the posture of this case relative to the appeals of the Final Order in GUD No. 9791, action could have been taken earlier to minimize rate case expenses. Additionally, the Examiners do not find that the posture of this case compared to GUD No. 10006 is sufficiently distinguishable to justify a sevenfold increase in rate case expenses.

The Examiners recognize that one policy reason for adoption of settlement agreements is to conserve judicial resources and rate-case expenses. In this case, the parties filed testimony in anticipation of a hearing. Prefiled testimony was filed that allegedly supported a combined total of $287,031. This was the amount requested if the case was not settled, a hearing held, and the final order appealed. The rate-case-expense request included in the settlement agreement is for the *exact same* amount. Thus, the settlement agreement fails to confer any benefit, as to rate-case expenses on the ratepayer.

Further, the rate-case expense request may have a disproportionate impact in this proceeding. In GUD No. 10006, GCCC represented sixteen municipalities. Whereas in these consolidated appeals, TCUC represents only seven municipalities. The rate case expenses may have a disproportionate effect on the total number of customers represented in this case. In this context it should be noted that the total number of residential and commercial customers in all of the Texas Coast Division, including GCCC municipalities and TCUC, municipalities, totals approximately 244,012. The parties to this proceeding propose to allocate $287,031 to only a fraction of that total.

Attached as Exhibit 3, is a draft order that rejects the settlement agreement.

➢ *Limit Recovery Based Upon COSA Tariff Rate Case Expense Provisions*

In between these two options, the Commission may use the rate-case-expense-recovery language contained in the COSA – 3 as a cap on rate-case expense. One option would be to grant the utility its rate-case expenses in responding to the municipalities' denial of its proposed increase and the subsequent appeal that is to be filed once this settlement is approved. On the other hand, TCUC would be limited to recovery of only $100,000 as set out in the COSA – 3 tariff. The total rate-case expense, if this option were adopted by the Commission, would be $255,741 instead of $287,030. Alternatively, the Commission may simply limit recovery of both parties to $100,000 and allocate the expenses based upon the relative portion of the overall request: 54% to CenterPoint and 46% to TCUC.

Applicability of the Settlement and Jurisdiction of the Commission

It should be noted that the settlement agreement as written appears to contemplate that the rate-case expenses awarded in this case are to be included in a subsequent COSA – 3 filing. Of course, the Commission does not have jurisdiction over municipalities that are not part of this proceeding. The COSA – 3 tariff applies to the cities of Clute and Freeport but they are not part of this proceeding. Thus, any subsequent COSA – 3 filing made with the cities of Clute and Freeport simply cannot include any expenses associated with this proceedings. Furthermore, the future environs COSA – 3 filing, may not include any of these expenses as those rates were approved as part of GUD No. 9985.[1]

Conclusion

In conclusion, among the options before the Commission in considering whether to adopt the settlement agreement are the following:

1. Adopt the settlement agreement with rate case expenses totaling $287,031.
2. Adopt the settlement agreement and limit recovery of rate case expenses to TCUC by $100,000 and allow the utility to recover its rate case expenses in the amount of $155,741. Total rate case expenses would be limited to $255,741.
3. Adopt the settlement agreement and limit recovery of rate case expenses of CenterPoint to $54,000 and limit TCUC's rate case expenses to $46,000. Total rate case expenses would be limited to $100,000.
4. Reject the settlement agreement and allow rates to go into effect by operation of law with no rate case expenses.

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[1] Similarly, in GUD No. 10006, the order does not extend to those municipalities over which the Commission did not have jurisdiction in GUD No. 10006: Beach City, Beasley, Brookshire, Brookside Village, Danbury, East Bernard, El Lago, Hillcrest Village, Hitchcock, Jones Creek, Katy, Kendleton, La Porte, Liverpool, Manvel, Needville, Orchard, Oyster Creek, Pleak, Richmond, Richwood, Wallis, and Webster. The rates in those municipalities are governed by COSA – 2, but jurisdiction over the rates charged in those municipalities did not attach as a part of the proceedings in GUD No. 10006. Likewise, the COSA – 2 filing for the environs shall not include the rate case expenses approved in GUD No. 10006 as those environs were not a part of the proceedings in GUD No. 10006.

The Examiners recommend that the settlement agreement be rejected and that the rates go into effect by operation of law on March 23, 2011. As the statutory deadline is not until March 23, 2011, the Commission may consider this issue at the March 8th and the March 22nd Conferences.

BEFORE THE
RAILROAD COMMISSION OF TEXAS

APPEAL OF CENTERPOINT ENERGY RESOURCES CORP., d/b/a CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS FROM THE ACTIONS OF THE CITIES OF ANGLETON, BAYTOWN, FREEPORT, LEAGUE CITY, PEARLAND, SHOREACRES, WEST COLUMBIA, AND WHARTON, TEXAS (COSA-3).	§ § § § § § § § § §	**GAS UTILITIES DOCKET Nos. 10097, 10105, & 10109**

FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to Tex. Gov't Code Ann. Chap 551, et seq. (Vernon 2004 & Supp. 2010). The Railroad Commission adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint") is a gas utility as that term is defined in the Texas Utility Code.

2. On July 8, 2011, CenterPoint filed this appeal of actions taken by the cities of Angleton, Baytown, and Shoreacres denying the company's proposed cost of service adjustment ("COSA – 3") for 2010.

3. On August 10, 2011, CenterPoint filed this appeal of actions taken by the cities of Pearland and Wharton denying the company's proposed cost of service adjustment ("COSA – 3") for 2010.

4. On August 25, 2011, CenterPoint filed this appeal of actions taken by the cities of Freeport, League City, and West Columbia denying the company's proposed cost of service adjustment ("COSA – 3") for 2010.

5. Collectively the cities of Angleton, Baytown, Freeport, League City, Pearland, Shoreacres, West Columbia, and Wharton, are referred to as the Texas Coast Utilities Coalition ("TCUC").

6. On April 29, 2011, CenterPoint filed with the TCUC municipalities an application to modify the cost of service adjustment (COSA) described in the existing COSA-3 tariff applicable to natural gas customers within those municipalities.

7. Through these applications, CenterPoint initially proposed to establish a monthly cost of service adjustment increase of $.03 for residential customers, $.06 for small commercial customers, and $1.04 for large volume customers, effective August 1, 2011.

8. In addition to the COSA filing made with the municipalities, CenterPoint filed a COSA application with the Commission and that case was docketed as GUD No. 10074. The COSA application was intended to adjust rates for the unincorporated areas of the Texas Coast Division, including the environs of the TCUC municipalities.

COSA background

9. The COSA-3 tariff was first approved by the Commission in CenterPoint's most recent comprehensive rate case for the Texas Coast Division, GUD No. 9791, in a December 16, 2008, *Order on Rehearing.*

10. The COSA-3 tariff approved by the Commission in GUD No. 9791 establishes a procedure whereby CenterPoint annually proposes adjustments to its Texas Coast Division customer charges for natural gas distribution service. The adjustments account for changes in CenterPoint's cost of service as calculated according to a formula in the tariff.

Notice

11. The COSA-3 tariff, at Para. C.8, establishes that newspaper notice of an annual adjustment proposed by CenterPoint must be published in the Houston Chronicle no later than 45 days after the date CenterPoint files its annual COSA application with the Commission.

12. For the COSA applications filed in these proceeding, CenterPoint's 45-day notice deadline was June 13, 2011.

13. On June 1, 2011, CenterPoint filed a copy of the notice published in the Houston Chronicle and an *Affidavit of Publication* affirming that notice was published in the Houston Chronicle on Saturday, May 28, 2011.

14. CenterPoint's COSA-3 notice was timely published on May 28, 2011 before the 45-day deadline for publication of notice on June 13, 2011.

15. In addition to published notice, CenterPoint made the COSA docket materials available to the public on May 27, 2011 via a posting on the company's website at www.centerpointenergy.com/cosa.

Rate Request

16. On July 15, 2011, CenterPoint revised its requested COSA-3 adjustments. The revised proposed COSA-3 adjustments are as follows:

COSA-3 RATES BASED UPON 2010 COST OF SERVICE

CUSTOMER CATEGORY	COSA-3
COSA-3, residential, per month	($.02)
COSA-3, small commercial, per month	($.02)
COSA-3, large volume, per month	($.29)

17. The revised COSA-3 adjustments proposed in CenterPoint's revised tariff filed on July 15, 2011 are just and reasonable and consistent with the terms of the COSA-3 tariff and applicable Commission orders and were approved by the Commission in GUD Nos. 10073 and 10074.

18. CenterPoint requested that the rates approved in those proceedings, the rates set out in Finding of Fact No. 16, above, be approved in these consolidated appeals.

19. None of the factors in the municipal ordinances denying CenterPoint's requested COSA adjustment referenced cost of service adjustments within the scope of the COSA tariff.

20. The pension expense included in the COSA adjustment was based upon the calendar year operating expenses as required by the COSA tariff.

21. The severance expense included in the COSA adjustment was based upon the calendar year operating expenses as required by the COSA tariff.

22. Services are provided to the Texas Coast Division by various CenterPoint affiliates.

23. The evidence established in this case that those services are necessary to the operation of the Texas Coast Division distribution system.

24. To the extent possible, costs are assigned directly. CenterPoint established that the vast majority of affiliate expenses are allocated through a reasonable allocation methodology reviewed and evaluated in GUD No. 9791.

25. The ratios that were approved in GUD No. 9791 for allocation of affiliate expenses are outside the scope of this proceeding.

26. CenterPoint has established that the prices charged to CenterPoint are no higher than the prices charged for the same service other affiliates or division or to non-affiliated persons.

27. Pursuant to the provisions of the COSA – 3 tariff the TCUC municipalities have opted to not renew the applicable COSA tariff.

Rate Case Expenses

28. CenterPoint has requested $101,959.56 in rate case expenses. This includes $66,959.56 in actual expenses and $35,000 in estimated expenses required to complete these proceedings.

29. CenterPoint has previously reimbursed the TCUC municipalities $10,302.43 for expenses associated with the review of the COSA tariff at the municipal level.

30. TCUC has requested $254,881.47 in rate case expenses. This includes $54,881.47 in actual expenses and $200,000 in estimated expenses required to complete these proceedings.

31. TCUC has already been reimbursed $10,302.43 of its expenses by CenterPoint pursuant to the provisions the COSA tariff.

32. The amount of rate case expenses incurred by TCUC in this proceeding is not just and reasonable when compared to the rate decrease requested by the company.

33. CenterPoint sought approval of rates that resulted in a revenue decrease of $84,734.

34. TCUC seeks recovery of expenses that would effectively eliminate any decrease.

35. The issues raised by TCUC were outside the scope of this proceeding and recovery of rate case expenses related to those issues is not just and reasonable.

36. Accordingly, all rate case expenses requested by TCUC in excess of the $10,302.43 already reimbursed by CenterPoint for TCUC's initial review of the COSA filing are not just and reasonable.

37. It is reasonable that CenterPoint recover its rate case expenses, plus amounts already reimbursed to the TCUC municipalities, through a surcharge to customers within the TCUC municipalities over a one-year period.

CONCLUSIONS OF LAW

1. CenterPoint Enrgy Entex (CenterPoint) is a "Gas Utility" as defined in Tex. Util. Code Ann. §101.003(7) (Vernon 2009) and §121.001(2009) and is therefore subject to the jurisdiction of the Railroad Commission (Commission) of Texas.

2. The Railroad Commission of Texas (Commission) has jurisdiction over CenterPoint and CenterPoint's statement of intent and appeals under Tex. Util. Code Ann. §§ 102.001, 103.022, 103.054, & 103.055, 104.001, 104.001 and 104.201 (Vernon 2007).

3. Under Tex. Util. Code Ann. §102.001 (Vernon 2009), the Commission has exclusive original jurisdiction over the rates and services of a gas utility that distributes natural gas in areas outside of a municipality and over the rates and services of a gas utility that transmits, transports, delivers, or sells natural gas to a gas utility that distributes the gas to the public.

4. This Appeals was processed in accordance with the requirements of the Gas Utility regulatory Act (GURA), and the Administrative Procedure Act, Tex. Gov't Code ANN. §§2001.001-2001.902 (Vernon 2000 and Supp. 2009) (APA).

5. In accordance with the stated purpose of the Texas Utilities Code, Subtitle A, expressed under Tex. Util. Code Ann. §101.002 (Vernon 1998), the Commission has assured that the rates, operations, and services established in this docket are just and reasonable to customers and to the utilities.

6. In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to Texas Utilities Code, §103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Evidence must be provided related to, but not limited to, the amount of work done, the time and labor required to accomplish the work, the nature, extent, and difficulty of the work done, the originality of the work, the charges by others for work of the same or similar nature, and any other factor taken into account in setting the amount of the compensation. 16 Tex. Admin. Code 7.5530(a).

7. In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out previously, and shall also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted. 16 Tex. Admin. Code 7.5530(b).

8. The jurisdiction of the Commission in this case does not extend to municipalities that are not parties to this proceedings, Tex. Util. Code Ann. §§ 102.001 and 103.055.

IT IS THEREFORE ORDERED that the rates reflected in the attached tariffs are just and reasonable and hereby approved.

This Order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission

action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

SIGNED this 10th day of January, 2011.

RAILROAD COMMISSION OF TEXAS

_____

CHAIRMAN ELIZABETH A. JONES

_____

COMMISSIONER DAVID PORTER

_____

COMMISSIONER BARRY T. SMITHERMAN

ATTEST:

_____

SECRETARY

CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
GENERAL SERVICE-SMALL
RATE SCHEDULE NO. GSS-2087

APPLICATION OF SCHEDULE

This schedule is applicable to natural gas service to any customer engaging in any business, professional or institutional activity, for all uses of gas, including cooking, heating, refrigeration, water heating, air conditioning, and power.

This schedule is applicable to any general service customer for commercial uses and industrial uses, except standby service, whose average monthly usage for the prior calendar year is 150,000 cubic feet or less. Natural gas supplied hereunder is for the individual use of the customer at one point of delivery and shall not be resold or shared with others.

MONTHLY RATE

For bills rendered on and after the effective date of this rate schedule, the monthly rate for each customer receiving service under this rate schedule shall be the sum of the following:

(a) The Base Rate consisting of:

(1) Customer Charge – $13.84*;

(2) Commodity Charge –

First 150 Ccf	$0.06655 per Ccf
Over 150 Ccf	$0.03258 per Ccf

(b) Tax Adjustment – The Tax Adjustment will be calculated and adjusted periodically as defined in the Company's Tax Adjustment Rate Schedule and Franchise Fee Adjustment Rate Schedule.

(c) Gas Cost Adjustment – The applicable Purchased Gas Adjustment (PGA) Rate – as calculated on a per Ccf basis and adjusted periodically under the applicable Purchased Gas Adjustment (PGA) Rate Schedule – for all gas used.

RULES AND REGULATIONS

Service under this schedule shall be furnished in accordance with the Company's General Rules and Regulations, as such rules may be amended from time to time. A copy of the Company's General Rules and Regulations may be obtained from Company's office located at 1111 Louisiana Street, Houston, Texas.

* GUD 9791Customer Charge	$12.50
2008 COSA-3 Adjustment	.63
2009 COSA-3 Adjustment	.73
2010 COSA-3 Adjustment	(.02)
Total Customer Charge	$13.84

CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
GENERAL SERVICE-SMALL
RATE SCHEDULE NO. GSS-2087

APPLICATION OF SCHEDULE

This schedule is applicable to natural gas service to any customer engaging in any business, professional or institutional activity, for all uses of gas, including cooking, heating, refrigeration, water heating, air conditioning, and power.

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For bills rendered on and after the effective date of this rate schedule, the monthly rate for each customer receiving service under this rate schedule shall be the sum of the following:

(a) The Base Rate consisting of:

(1) Customer Charge – $13.84*;

(2) Commodity Charge –

First 150 Ccf	$0.06655 per Ccf
Over 150 Ccf	$0.03258 per Ccf

(b) Tax Adjustment – The Tax Adjustment will be calculated and adjusted periodically as defined in the Company's Tax Adjustment Rate Schedule and Franchise Fee Adjustment Rate Schedule.

(c) Gas Cost Adjustment – The applicable Purchased Gas Adjustment (PGA) Rate – as calculated on a per Ccf basis and adjusted periodically under the applicable Purchased Gas Adjustment (PGA) Rate Schedule – for all gas used.

RULES AND REGULATIONS

Service under this schedule shall be furnished in accordance with the Company's General Rules and Regulations, as such rules may be amended from time to time. A copy of the Company's General Rules and Regulations may be obtained from Company's office located at 1111 Louisiana Street, Houston, Texas.

* GUD 9791Customer Charge	$12.50
2008 COSA-3 Adjustment	.63
2009 COSA-3 Adjustment	.73
2010 COSA-3 Adjustment	(.02)
Total Customer Charge	$13.84

CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
RESIDENTIAL SERVICE
RATE SCHEDULE NO. R-2087

APPLICATION OF SCHEDULE

This schedule is applicable to any customer to whom service is supplied in a single private dwelling unit and its appurtenances, the major use of which is for household appliances, and for the personal comfort and convenience of those residing therein.

Natural gas supplied hereunder is for the individual use of the customer at one point of delivery and shall not be resold or shared with others.

MONTHLY RATE

For bills rendered on and after the effective date of this rate schedule, the monthly rate for each customer receiving service under this rate schedule shall be the sum of the following:

(a) The Base Rate consisting of:

(1) Customer Charge – $14.77*;

(2) Commodity Charge –
All Ccf $0.03055 per Ccf

(b) Tax Adjustment – The Tax Adjustment will be calculated and adjusted periodically as defined in the Company's Tax Adjustment Rate Schedule and Franchise Fee Adjustment Rate Schedule.

(c) Gas Cost Adjustment – The applicable Purchased Gas Adjustment (PGA) Rate – as calculated on a per Ccf basis and adjusted periodically under the applicable Purchased Gas Adjustment (PGA) Rate Schedule – for all gas used.

RULES AND REGULATIONS

Service under this schedule shall be furnished in accordance with the Company's General Rules and Regulations, as such rules may be amended from time to time. A copy of the Company's General Rules and Regulations may be obtained from Company's office located at 1111 Louisiana Street, Houston, Texas.

* GUD 9791Customer Charge	$13.50
2008 COSA-3 Adjustment	.55
2009 COSA-3 Adjustment	.74
2010 COSA-3 Adjustment	(.02)
Total Customer Charge	$14.77

Year ending 12/31/2010

GUD Nos. 10073 and 10074

		COSA-3 COST OF SERVICE		2009 review expenses, not subject to 5% rate cap
OPERATING EXPENSES	1	Depreciation and amortization expense, Acct. Nos. 403-407	$ 7,922,351	
	2	Taxes other that FIT, Acct. No. 408	$ 2,276,518	
	3	Operations and maintenance expense, Acct. Nos. 870-894	$ 13,288,671	
	4	Customer related expenses, Acct. Nos. 901-916	$ 9,664,077	
	5	Admin & General expense, Acct. Nos. 920-932	$ 11,633,904	
	6	Expense adjustments, Finding of Fact No. 38	$ (148,156)	
	7	Factoring adjustment, Finding of Fact No. 39	$ 194,632	
	8	Review costs, Finding of Fact No. 47	$ 75,980	$ 21,492
	9	**C1 COSA OPERATING EXPENSES**	$ 44,907,977	
RETURN ON INVESTMENT	10	Net utility plant in service, by FERC account, adjusted to exclude asset retirement obligation amounts. Gross utility plant in service and accumulated depreciation by account are shown by month so that an annual average utility plant in service can be calculated.	$ 117,620,900	
	11	Plus: storage gas inventories, 13-month avg (COSA-2 only)	$ -	
	12	Plus: materials and supplies inventories, 13-month avg	$ 80,696	
	13	Plus: prepayments, 13-month avg	$ 132,496	
	14	Plus: cash working capital, as adjusted per Finding of Fact 39	$ (2,143,012)	
	15	Less: customer deposits, Acct. 235, and advances, Acct. 252	$ (4,388,488)	
	16	Less: deferred federal income taxes	$ (12,730,071)	
	17	TOTAL RATE BASE	$ 98,572,521	
	18	Multiplied by: 11.8% pre-tax rate of return	11.8%	
	19	**C2 COSA RETURN ON INVESTMENT**	$ 11,631,557	
TAX	20	**C3 TEXAS FRANCHISE TAX,** Acct. 409	$ 143,107	
ADJUSTMENT	21	C1 + C2 + C3	$ 56,682,641	
	22	Less: calendar yr actual non-gas revenue	$ (51,673,700)	
	23	Less: other revenue, adjusted	$ (5,092,828)	
	24	SUBTOTAL	$ (83,887)	$ 21,492
	25	Divided by: 1 - Texas Franchise Tax statutory rate of 1%	99%	99%
	26	**C4 COST OF SERVICE ADJUSTMENT**	$ (84,734)	$ 21,709
RATES	27	**C5 COSA RATE CALCULATION**		
	28	TCD customers, residential	238,154	145,162
	29	TCD customers, small commercial	11,966	6,764
	30	TCD customers, large commercial	503	246
	31	Total TCD customers	250,623	152,172
	32	TCD percent allocation, residential	88.8498%	88.8498%
	33	TCD percent allocation, small commercial	6.8261%	6.8261%
	34	TCD percent allocation, large commercial	4.3241%	4.3241%
	35	Total	100.0000%	100.0000%
	36	TCD COSA allocation, residential	$ (75,286)	$ 19,288
	37	TCD COSA allocation, small commercial	$ (5,784)	$ 1,482
	38	TCD COSA allocation, large commercial	$ (3,664)	$ 939
	39	TOTAL COSA, ALLOCATED BY CUSTOMER CLASS	$ (84,734)	$ 21,709

					COSA-3	CURRENT RATE	WITH COSA ADDED
	40	TCD COSA allocation per customer per month, residential	$ (0.03)	$ 0.01	$ (0.02)	$14.79	$ 14.77
	41	TCD COSA allocation per customer per month, sm. Comm.	$ (0.04)	$ 0.02	$ (0.02)	$13.86	$ 13.84
	42	TCD COSA allocation per customer per month, lg. Comm.	$ (0.61)	$ 0.32	$ (0.29)	$14.69	$ 14.40
CAP	43	**COSA CAP CALCULATION**					
	44	COSA cap, residential, 5% of $14.79	$ (0.74)				
	45	COSA cap, small commercial, 5% of $13.86	$ (0.69)				
	46	COSA cap, large commercial, 5% of $14.69	$ (0.73)				

Year ending 12/31/2010

GUD Nos. 10073 and 10074

		COSA-3 COST OF SERVICE		2009 review expenses, not subject to 5% rate cap
OPERATING EXPENSES	1	Depreciation and amortization expense, Acct. Nos. 403-407	$ 7,922,351	
	2	Taxes other that FIT, Acct. No. 408	$ 2,276,518	
	3	Operations and maintenance expense, Acct. Nos. 870-894	$ 13,288,671	
	4	Customer related expenses, Acct. Nos. 901-916	$ 9,664,077	
	5	Admin & General expense, Acct. Nos. 920-932	$ 11,633,904	
	6	Expense adjustments, Finding of Fact No. 38	$ (148,156)	
	7	Factoring adjustment, Finding of Fact No. 39	$ 194,632	
	8	Review costs, Finding of Fact No. 47	$ -	$ -
	9	**C1 COSA OPERATING EXPENSES**	$ 44,831,997	
RETURN ON INVESTMENT	10	Net utility plant in service, by FERC account, adjusted to exclude asset retirement obligation amounts. Gross utility plant in service and accumulated depreciation by account are shown by month so that an annual average utility plant in service can be calculated.	$ 117,620,900	
	11	Plus: storage gas inventories, 13-month avg (COSA-2 only)	$ -	
	12	Plus: materials and supplies inventories, 13-month avg	$ 80,696	
	13	Plus: prepayments, 13-month avg	$ 132,496	
	14	Plus: cash working capital, as adjusted per Finding of Fact 39	$ (2,143,012)	
	15	Less: customer deposits, Acct. 235, and advances, Acct. 252	$ (4,388,488)	
	16	Less: deferred federal income taxes	$ (12,730,071)	
	17	TOTAL RATE BASE	$ 98,572,521	
	18	Multiplied by: 11.8% pre-tax rate of return	11.8%	
	19	**C2 COSA RETURN ON INVESTMENT**	$ 11,631,557	
TAX	20	**C3 TEXAS FRANCHISE TAX,** Acct. 409	$ 143,107	
ADJUSTMENT	21	C1 + C2 + C3	$ 56,606,661	
	22	Less: calendar yr actual non-gas revenue	$ (51,673,700)	
	23	Less: other revenue, adjusted	$ (5,092,828)	
	24	SUBTOTAL	$ (159,867)	$ -
	25	Divided by: 1 - Texas Franchise Tax statutory rate of 1%	99%	99%
	26	**C4 COST OF SERVICE ADJUSTMENT**	$ (161,481)	$ -
RATES	27	**C5 COSA RATE CALCULATION**		
	28	TCD customers, residential	238,154	145,162
	29	TCD customers, small commercial	11,966	6,764
	30	TCD customers, large commercial	503	246
	31	Total TCD customers	250,623	152,172
	32	TCD percent allocation, residential	88.8498%	88.8498%
	33	TCD percent allocation, small commercial	6.8261%	6.8261%
	34	TCD percent allocation, large commercial	4.3241%	4.3241%
	35	Total	100.0000%	100.0000%
	36	TCD COSA allocation, residential	$ (143,476)	$ -
	37	TCD COSA allocation, small commercial	$ (11,023)	$ -
	38	TCD COSA allocation, large commercial	$ (6,983)	$ -
	39	TOTAL COSA, ALLOCATED BY CUSTOMER CLASS	$ (161,481)	$ -

					COSA-3 without review costs	Review cost factor	COSA-3 with review costs
	40	TCD COSA allocation per customer per month, residential	$ (0.05)	$ -	$ (0.05)	$ 0.03	$ (0.02)
	41	TCD COSA allocation per customer per month, sm. Comm.	$ (0.08)	$ -	$ (0.08)	$ 0.06	$ (0.02)
	42	TCD COSA allocation per customer per month, lg. Comm.	$ (1.16)	$ -	$ (0.73)	$ 0.44	$ (0.29)
CAP	43	**COSA CAP CALCULATION**					
	44	COSA cap, residential, 5% of $14.79	$ (0.74)				
	45	COSA cap, small commercial, 5% of $13.86	$ (0.69)				
	46	COSA cap, large commercial, 5% of $14.69	$ (0.73)				